(25,587)

(25,588)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 757.

G. S. NICHOLAS & CO. ET AL., PETITIONERS,

vs.

THE UNITED STATES.

No. 758.

ALEX. D. SHAW & CO. ET AL., PETITIONERS,

vs.

THE UNITED STATES.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF CUSTOMS APPEALS.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 30, 1917.

a *Certified.*

1594. 1602.

United States Court of Customs Appeals.

No. 1594.

G. S. NICHOLAS & Co. et al., Appellants,
vs.
THE UNITED STATES, Appellee.

No. 1602.

ALEX. D. SHAW & Co. et al., Appellants,
vs.
THE UNITED STATES, Appellee.

TRANSCRIPT OF RECORD.

On Appeal from the Board of United States General Appraisers.

Comstock & Washburn, W. P. Preble, Attorneys for Appellants.
Bert Hanson, Assistant Attorney-General, Attorney for Appellee.

Filed United States Court of Customs Appeals, Nov. 8, 1915. Arthur B. Shelton, Clerk.

1 *Petition.*

United States Court of Customs Appeals.

1594.

G. S. NICHOLAS & Co. et al., Petitioners,
vs.
THE UNITED STATES.

To the Honorable the United States Court of Customs Appeals:

Your petitioners, having complied with the statutes in such case made and provided, and being dissatisfied with the decisions of the Board of United States General Appraisers made within sixty days immediately preceding the date hereof in each of the matters set forth and referred to in the annexed Schedule A, which is hereby made a part hereof, as to the construction of the law and facts respecting the classification of such merchandise and the rate of duty imposed thereon under such classification, respectfully pray that the said United States Court of Customs Appeals review the questions of

law and fact involved in said decisions, and for that purpose pray that an order be entered requiring the said Board of Appraisers to return to said United States Court of Customs Appeals the record and evidence taken by them, together with a certified statement of the facts involved in each of the said matters and their decisions thereon. And your petitioners also pray for such other or further orders or relief in the premises as the statutes provide or to the Court shall seem just.

The particulars of the errors of law and fact involved in said decisions of said Board of Appraisers of which your petitioners complain are set forth in the annexed Schedule B. which is hereby referred to and made a part hereof.

Dated, New York, September 3, 1915.

G. S. NICHOLAS & CO.,
E. LA MONTAGNE'S SONS,
F. L. ROBERTS & CO.,
S. S. PIERCE CO.,
Petitioners,

By COMSTOCK & WASHBURN,
Attorneys, 12 *Broadway, New York City, N. Y.*

2 SCHEDULE A.

The following are the importations and entries covered by this proceeding, with the dates thereof, and with such other data as are convenient for purposes of identification:

Date of decisions Jul- 16/15.

Entry No.	Vessel.	Entered.	Protest No.
	G. S. Nicholas & Co. (N. Y.).		
254276	Ansonia	Sep. 11/14	772188/75745
261465	Cameronia	Sep. 21/14	772188/75745
244920	Cameronia	Aug. 25/14	772188/75745
217650	Minneapolis	Jul- 21/14	772188/75745
261466	Cameronia	Sep. 21/14	772189/71921
231739	Columbia	Aug. 4/14	772189/71921
	E. La Montagne's Sons (N. Y.).		
161267	Caledonia	May 27/14	772177/71691
141933	Wells City	May 9/14	772177/71691
224159	Minnewaska	Jul- 28/14	772177/71691
196225	Minnewaska	Jun- 30/14	772177/71691
232392	Minnehaha	Aug. 5/14	772177/71691
202580	Columbia	Jul- 9/14	772178/65286
217764	Caledonia	Jul- 22/14	772178/65286
244657	Baltic	Aug. 24/14	772178/65286
216731	Minneapolis	Jun- 21/14	772178/65286
196225	Minnewaska	Jul- 1/14	772178/65286

F. L. Roberts & Co. (Boston).

5551	Scandinavian	Mar. 4/13	766750/4898
6716	Numidian	Jan. 6/13	766750/4898
2448	Scandinavian	May 2/12	766750/4898
4664	Numidian	Dec. 5/12	766750/4898
5022	Numidian	Jan. 15/13	766750/4898

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S. S. Pierce Co. (Boston).

35166	Franconia	Aug. 31/14	770684/5295
35371	Devonian	Sep. 1/14	770684/5295
36578	Laconia	Sept. 11/14	770684/5295
32690	Arabic	Aug. 6/14	770684/5295
564	Norwegian	Oct. 15/14	770684/5295

SCHEDULE B.

The Board of United States General Appraisers has confirmed the action of the Collector of the Port in assessing and exacting countervailing duty under the Tariff Act of October 3, 1913 at 3 pence per gallon on plain spirits and 5 pence per gallon on compound spirits exported from Great Britain, thereby making errors of law and fact;

1. In holding that the allowance by Great Britain of 3 pence per gallon on plain spirits and 5 pence per gallon on compound spirits covered by these protests amounted to a bounty or grant upon exportation within the meaning of Section 4, Paragraph E of the Tariff Act of October 3, 1913.

2. In finding or holding that the British Government paid or bestowed, directly or indirectly, some bounty or grant within the meaning of Section 4, Paragraph E of the Tariff Act of October 3, 1913, upon the exportation of the spirits in question.

3. In not finding or holding that the British Government does not, and in these cases did not, bestow directly or indirectly, any bounty or grant within the meaning of Section 4, Paragraph E of the Tariff Act of October 3, 1913, upon the exportation of the spirits in question.

4. In holding that the importations of spirits in question were within the purview of Paragraph E of Section 4 of the Tariff Act of October 3, 1913, and that the additional or countervailing

4 duties of 3 pence per gallon and 5 pence per gallon were rightly and lawfully levied and collected thereon under the terms of said paragraph.

5. In not holding that the importation of spirits in question were not within the purview of said Paragraph E, and that the additional or countervailing duties of 3 pence per gallon and 5 pence per gallon were wrongly and unlawfully levied and collected thereon.

6. In not deciding that if the merchandise was within the provisions of said Paragraph E of Section 4, it was chargeable with a lower rate or less amount of duty than was assessed by the Collector.

7. In disregarding or not giving due weight to the intent of Congress in re-enacting in said Paragraph E the identical words of Section 6 of the Tariff Act of 1909 in the light of the long continued practice of not levying or collecting any such additional or countervailing duty on British spirits since 1860, and also in the light of prior rulings and decisions holding that the allowances in question are neither bounties nor grants upon exportation within the meaning of those terms as used in the tariff laws.

8. In overruling the protests.

9. In not sustaining the protests.

Endorsed: United States Court of Customs Appeals. Filed Sep. 4, 1915. Arthur B. Shelton, Clerk.

Mandate.

Mandate issued September 4, 1915.
ARTHUR B. SHELTON, *Clerk.*

Bond.

Bond of Philip Comstock in the sum of twenty-five dollars approved by
O. M. BARBER,

Filed Sep. 4, 1915.

5 *Petition.*

United States Court of Customs Appeals.

1602.

ALEX. D. SHAW & CO. AND KNAUTH, NACHOD & KUHNE, Petitioners,

vs.

THE UNITED STATES.

Countervailing Duty.

To the Honorable, the United States Court of Customs Appeals:

Your petitioners, having complied with the statutes in such case made and provided, and being dissatisfied with the decisions of the Board of United States General Appraisers made within sixty days immediately preceding the date hereof in each of the matters set forth and referred to in the annexed Schedule A, which is hereby made a part hereof, as to the construction of the law and the facts respecting the classification of such merchandise and the rate of

duty imposed thereon under such classification, respectfully pray that the said United States Court of Customs Appeals review the questions of law and fact involved in said decisions, and for that purpose pray that an order be entered requiring the said Board of Appraisers to return to said United States Court of Customs Appeals the record and evidence taken by them, together with a certified statement of the facts involved in each of the said matters and their decisions thereon. And your petitioners also pray for such other or further orders or relief in the premises as the statutes provide or to the Court shall seem just.

The particulars of the errors of law and fact involved in said decisions of said Board of Appraisers of which your petitioners complain are set forth in the annexed Schedule B, which is hereby referred to and made a part hereof.

Dated, New York, Sept. 9, 1915.

ALEX. D. SHAW & CO., AND KNAUTH, NACHOD & KUHNE,
Petitioners,
By W. P. PREBLE,
Attorney, 150 *Nassau St., New York City, N. Y.*

SCHEDULE A.

6 The following are the importations and entries covered by this proceeding, with the dates thereof, and with such other data as are convenient for purposes of identification:

Protest No.	Entry No.	Vessel.	Entered.	Goods.	Rate.	C. V. D.
772.173	23,282	St. Paul	Aug. 3/14	50 cs. gin	5d.	$7.10
772,211	251,233	Cedric	Sept. 8/14	200 cs. gin	5d.	28.18
"	247,873	Adriatic	Aug. 31/14	300 cs. whiskey	3d.	27.45
"	261,645	Cameronia	Sept. 2?/14	4.100 cs. whiskey	3d.	379.71
"	252,517	Saxonia	Sept. 8/14	1,000 cs. gin	5d.	141.53
"	250 053	New York	" 4/14	300 cs. whiskey	3d.	27.49
772,212	248,5?5	Columbia	" 1/14	1,800 cs. whiskey	3d.	166.72
"	245,062	Baltic	Aug. 25 14	100 cs. whiskey	3d.	9.19
"	254 190	Celtic	Sept. 12/14	500 cs. whiskey	3d.	45.81
"	250,646	Cedric	5/14	250 cs. whiskey	3d.	22.63
772,391	217.231	Caledonia	July 20/14	100 cs. B. & W.	3d.	9.25
773,672	245,630	Cameronia	Aug. 24/14	50 cs. B. & W.	3d.	4.56
"	239,469	Ausonia	" 13/14	450 cs. B. & W.	3d.	22.81
773.672	237,793	New York	Aug. 11/14	200 cs. gin	5d.	28.33
"	2?2,498	Columbia	Aug. 3/14	350 cs. B. & W.	3d.	32.42
"	253,072	Saxonia	Sept. 8/14	200 cs. gin	5d.	28.28
773.922	248,727	Columbia	" 1/14	300 cs. whiskey	3d.	27.37
"	232,828	St. Paul	Aug. 3/14	250 cs. gin	5d.	35.41
"	245,749	Cameronia	" 24/14	200 cs. whiskey	3d.	18.25
"	245,933	"	" 24/14	250 cs. B. & W.	3d.	23.03
773,937	275,993	Pannonia	Oct. 15/14	300 cs. B. & W.	3d.	31.33
"	2?0.414	Adriatic	Aug. 3/14	200 cs. whiskey	3d.	18.31
"	254,189	Ausonia	Sept. 12/14	5.000 cs. whiskey	3d.	471.19
"	237,603	Cedric	Aug. 11/14	200 cs. whiskey	3d.	18.31
"	279 029	Baltic	Oct. 19/14	75 cs. gin	5d.	10.64
"	248,5?6	Columbia	Sept. 2/11	700 cs. B. & W.	3d.	63.87
775.118	254,589	Ausonia	" 11/14	50 cs. B. & W.	3d.	4.56

SCHEDULE B.

The Board of United States General Appraisers has confirmed the action of the Collector of the Port in assessing and exacting duty at 3d on Whiskey, and 5d on Gin, imported from Great Britain, at New York City, by decision rendered on July 16, 1915, T. D. 35,595—G. A. 7758, thereby making errors of law and fact;

1. The Board of United States General Appraisers erred in holding that "an allowance of 3d to 5d is made to the exporter" of Whiskey and Gin respectively from Great Britain; meaning thereby as exporter.

2. The Board erred in holding that such allowance constitutes a bounty or grant within the meaning of paragraph E of Section 4 of the Act of 1913.

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3. The Board erred in its determination of the effect of the British Spirits Act and the administration thereof to wit:

That it created a bounty or grant upon the export of spirits like those in question.

4. The Board erred in holding that the purpose of the United States Act was to prevent an unequal competition in our domestic market with the products of other countries.

5. The Board erred in holding that the very purpose of paragraph E is defeated if the spirits in question may be sold in the United States at a less price or at a greater profit than they can in England.

6. The Board erred in not giving due weight to the fact that T. D. 31,490 was before Congress at the time of the passage of the Act of 1913.

7. The Board erred in adopting construction of paragraph E which would be prohibitive upon all importation of the goods in question.

8. The Board erred in overruling the protest enumerated in Schedule A.

9. The Board erred in not sustaining said protest.

Endorsed: United States Court of Customs Appeals. Filed Sep. 11, 1915. Arthur B. Shelton, Clerk.

Mandate.

Mandate issued September 11, 1915.

ARTHUR B. SHELTON, *Clerk.*

Bond.

Bond of W. H. Amerman in the sum of twenty-five dollars approved by

O. M. BARBER,
Associate Judge.

Filed Sept. 11, 1915.

8 *Return of the Board.*

Board of United States General Appraisers.

No. 1594.

G. S. NICHOLAS & Co. et al., Appellants,

v.

THE UNITED STATES, Appellee.

The petitioners above named, having applied to the United States Court of Customs Appeals for a review of the questions of law and fact involved in a decision of the Board of United States General Appraisers in the above case, and the said Court having ordered the Board to transmit to said Court the record, evidence, exhibits, and samples, together with a certified statement of the facts involved in the case and its decision thereon:

Now, therefore, pursuant to said order, the Board of United States General Appraisers does hereby transmit to said Court the record, evidence, exhibits, and samples in said case, together with a certified statement of the facts involved in the case, and also its decision thereon.

This return specifically comprises the following:

1. Protests 772178/65286, 772188/75745, and 763750/4898 with the reports of the collectors of customs and the United States appraiser thereon;

2. The other protests enumerated in the petition, with the reports thereon, enclosed herewith in a separate envelope;

3. The record of submission;

4. The stipulation of counsel;

5. Exhibits 1 to 11, referred to in the stipulation, forwarded under separate cover;

6. A copy of the Board's decision in question, G. A. 7758 (T. D. 35595).

Witness The Honorable Jerry B. Sullivan, President of the Board, this sixth day of October, A. D. 1915.

D. P. DUTCHER,
Chief Clerk.

G. V. O.
Countervailing Duty on Spirits. [SEAL.]

9 *Protest* 772178/65286.

NEW YORK, Sep. 25, 1914.

Hon. Collector of Customs, Port of New York.

SIR: Notice of dissatisfaction is hereby given with, and protest is hereby made against, your ascertainment and liquidation of duties,

and your decision assessing duty under the Tariff Act of October 3, 1913, at five pence or three pence per gallon on so-called countervailing duties.

Said merchandise is not subject to any countervailing or additional duty. No bounty or grant has been directly or indirectly paid or bestowed upon the exportation of this merchandise. The merchandise is not within the purview of the provisions of Par. E. of Section IV, of the Tariff Act of Oct. 3, 1913.

It is alternatively claimed that if the merchandise is held to be within the provisions of Par. E. of Section IV, it is chargeable with a lower rate or less amount of duty than assessed by you.

Each of the above claims is made, and only made, with the proviso and conditionally, that the rate claimed is lower than the rate assessed. The parts of the law referred to in above claims are the only, or the most apt and specific, ones for said merchandise or articles and should control the classification. The above claims severally and collectively are alternatively made under the paragraph or sections referred to, both directly and by virtue of the "similitude" and "component material of chief value" clauses of Par. 386 of the Tariff Act of October 3, 1913.

The offer is hereby made to furnish evidence to the Board of United States General Appraisers, on reasonable notice from them, of the facts involved, and in support of the contentions, herein.

The excess is paid under compulsion, to obtain and retain possession of said merchandise or articles, and you and the government are held liable for the same, and a demand for the repayment thereof and a readjustment or liquidation of the entries in accordance with the above claims is hereby made. The marks and numbers below given are given under duress and without prejudice.

Entry No.	Vessel.	Entered.	Bond No.	Liquidated.
191225	Minnewaska	7/1/14	2	8/26/14
202580	Columbia	7/9/14	474	9/1/14
244057	Baltic	8/24/14	C	9/16/14
216731	Minneapolis	6/21/14	C	9/16/14
217764	Caledonia	7/22/14	1807	9/22/14

Marks and Nos. and various as per entries and invoices.

Respectfully,

E. LA MONTAGNE'S SONS,
By COMSTOCK & WASHBURN,
Attorneys, Attorneys and Counsellors at Law,
12 *Broadway, New York City.*

Endorsed: Custom House, New York. Received Sep. 25, 1914.

Report of the Collector.

Jan. 14, 1915.

Respectfully referred to the Board of U. S. General Appraisers for decision.

The merchandise consists of British spirits imported from the United Kingdom of Great Britain and Ireland. Following the instructions contained in T. D. 34465, and 34752, that an export bounty is allowed on plain British spirits, of 3 pence per British proof gallon and 5 pence per gallon on compound spirits, a countervailing duty, equal to the bounty paid, was assessed under paragraph E of section IV, Act of 1913 in addition to the regular rate of duty provided for in schedule H of said act.

The protest was lodged and fee paid within statutory time.

DUDLEY FIELD MALONE, *Collector.*

11 *Protest* 772188/75745.

NEW YORK, Dec. 11, 1914.

Hon. Collector of Customs, Port of New York.

SIR: Notice of dissatisfaction is hereby given with, and protest is hereby made against, your ascertainment and liquidation of duties, and your decision assessing duty under the Tariff Act of October 3, 1913, at five pence or three pence per gallon on so-called countervailing duties on spirits.

Said merchandise is not subject to any countervailing or additional duty. No bounty or grant has been directly or indirectly paid or bestowed upon the exportation of this merchandise. The merchandise is not within the purview of the provisions of Par. E. of Section IV, of the Tariff Act of Oct. 3, 1913. If the merchandise is held to be within the provisions of Par. E. of Section IV, it is chargeable with a lower rate or less amount of duty than assessed by you.

Each of the above claims is made, and only made, with the proviso and conditionally, that the rate claimed is lower than the rate assessed. The parts of the law referred to in above claims are the only, or the most apt and specific, ones for said merchandise or articles and should control the classification. The above claims severally and collectively are alternatively made under the paragraphs or sections referred to, both directly and by virtue of the "similitude" and "component material of chief value" clauses of Par. 385 of the Tariff Act of October 3, 1913.

The offer is hereby made to furnish evidence to the Board of United States General Appraisers, on reasonable notice from them, of the facts involved, and in support of the contentions, herein.

The excess is paid under compulsion, to obtain and retain possession of said merchandise or articles, and you and the government are held liable for the same, and a demand for the repayment thereof

and a readjustment or liquidation of the entries in accordance with the above claims is hereby made. The marks and numbers
12 below given are given under duress and without prejudice.

Entry No.	Vessel.	Entered.	Bond No.	Liquidated.
254276	Anconia	9/11/14	5021	11/11/14
261465	Cameronia	9/21/14	5854	11/13/14
244920	Cameronia	8/25/14	4055	11/14/14
217650	Mineapolis	7/21/14	C	12/3/14

Marks and Nos. various as per entries and invoices.

Respectfully,

G. S. NICHOLAS & CO.,
By COMSTOCK & WASHBURN,
Attorneys, Attorneys and Counsellors in *Law*,
12 *Broadway, New York City.*

Endorsed: Custom House. New York. Received Dec. 11, 1914.

Report of the Collector.

Jan. 14, 1915.

Respectfully referred to the Board of U. S. General Appraisers for decision.

The merchandise consists of British spirits imported from the United Kingdom of Great Britain and Ireland. Following the instructions contained in T. D. 34466, and 34752, that an export bounty is allowed on plain British spirits, of 3 pence for British proof gallon and 5 pence per gallon on compound spirits, a countervailing duty, equal to the bounty paid, was assessed under paragraph E of section IV, Act of 1913 in addition to the regular rate of duty provided for in schedule H of said act.

The protest was lodged and fee paid within statutory time.

DUDLEY FIELD MALONE,
Collector.

Protest 766750/4898.

BOSTON, Oct. 2, 1914.

Hon. Collector of Customs, Port of Boston.

SIR: Notice of dissatisfaction is hereby given with, and protest is hereby made against, your ascertainment and liquidation
13 of duties, and your decision assessing duty at 5 pence or 3 pence per gallon, or other rate or rates, on certain spirits, as so-called countervailing duties, covered by entries below named. The ground of objection under the Tariff Act of October 3, 1913, is that said merchandise is not subject to any countervailing or additional duty. No bounty or grant has been direcly or indirectly paid or bestowed upon the exportation of this merchandise. The

merchandise is not within the purview of the provisions of Par. E. of Section IV, of the Tariff Act of Oct. 3, 1913.

It is alternatively claimed that if the merchandise is held to be within the provisions of Par. E. of Section IV. it is chargeable with a lower rate or less amount of duty than assessed by you.

The above claims severally and collectively are alternatively made under the paragraphs or sections referred to both directly, and by similitude and component material or otherwise as provided in Par. 386, and by the rules as to the ordinary meaning of words, the statutory meaning, commercial designation, meaning or usage, controlling force of chief use and chief component in value, and by all statutory, judicial or other rules for the construction of the law; hereby reserving all questions of law and fact. Refund should be made of additional duties, assessed under Section 3, or otherwise, on goods decided under this protest to be free of duty or dutiable at specific rates, in which case said additional duties do not attach. This protest is intended to apply to all merchandise or articles included in the entries and importations referred to herein, and to the payments thereon. The entry numbers and other marks, numbers and data, below given, are given under duress, without prejudice, to aid you, and not to limit this protest. The excess is paid under compulsion, to obtain and retain possession of said mer-
14 chandise or articles and you and the government are held liable for the same, and a demand for the repayment thereof, and for a readjustment or liquidation of the entries in accordance with the above claims, is hereby made.

	Vessel.	Entered.	Entry No.	Bond No.	Re-Liquidated.	Marks and Nos.	
S/S	Scandinavian.....	Mar. 4/13	—	5551	Sept. 2/14		
S/S	Numidian.....	Jan. 6/13	—	6716	Sept. 2/14	add[d]	$409/14
S/S	Scandinavian.....	May 2/12	—	2448	Sept. 10/14	C	$1/5
S/S	Numidian.....	Dec. 5/12	—	4664	Sept. 11/14		
S/S	Numidian.....	Jan. 15/13	—	5022	Sept. 11/14	add[d]	$1/75

Respectfully,

F. L. ROBERTS & CO.,
By COMSTOCK & WASHBURN AND
CARROL E. PILLSBURY,
Attorneys for Importers, 47 Winter St., Boston.

Endorsed: Auditor's Office, Custom House, Boston. Received Oct. 2, 1914.

On the within protest No. 4898, of F. L. Roberts & Co., the importers request a hearing at New York, and that notices be sent to Comstock & Washburn, 12 Broadway, New York City.

Endorsed: Office of U. S. Appraiser, Boston, Mass., Oct. 28, 1914.
Endorsed: Custom House, Boston, Paid Oct. 24, 1914. G. W. B., Asst. Coll.
Endorsed: Naval Office, Boston. Oct. 24, 1914.

Letter Submitting Protest 4898.

Treasury Department, United States Customs Service.

OFFICE OF THE COLLECTOR,

BOSTON, MASS., Nov. 3, 1914.

The Board of U. S. General Appraisers, New York, N. Y.

GENTLEMEN: I submit herewith the protest, No. 4898, with accompanying invoices, of F. L. Roberts & Co., against the assessment of so-called countervailing duty on certain spirits, imported by them in the vessels, and entered for warehouse as follows:

ex "Scandinavian", entered Mar. 4, 1913, invoice 1059.
ex "Numidian", entered Jan. 6, 1913, invoice 853.
ex "Scandinavian", entered May 2, 1912, invoice 475.
ex "Numidian", entered Dec. 5, 1912, invoice 1311.
ex "Numidian", entered Jan. 15, 1913, invoice 2290.

The protestants claim that "The ground of objection under the Tariff Act of October 3rd, 1913, is that said merchandise is not subject to any countervailing or additional duty. No bounty or grant has been directly or indirectly paid or bestowed upon the exportation of this merchandise. The merchandise is not within the purview of the provisions of Par. E, of Section IV, of the Tariff Act of Oct 3, 1913.

"It is alternatively claimed that if the merchandise is held to be within the provisions of Par. E, of Section IV, it is chargeable with a lower rate or less amount of duty than assessed by you."

The importers request hearing at the port of New York.

Countervailing duty was assessed in liquidation under T. D. 34466, the warehouse entries in question having been reliquidated for the purpose of assessing the countervailing duty on the British spirits still in warehouse on June 24, 1914.

The requirements of Par. N, Section III of the Act of October 3, 1913, have been complied with by the protestants so far as the time limit for filing protest is concerned, and so far as the payment of fee is concerned, as defined in T. D. 34541, Par. 2.

A return of the invoices is requested.

Respectfully,

O. PERRY,
Special Deputy Collector.

One set of enclosures.
Endorsed: U. S. Gen. Apprs. Received Nov. 4, 1914.

16 *Answer to Protest* 4898.

Treasury Department, United States Customs Service.

OFFICE OF THE APPRAISER OF MERCHANDISE,

PORT OF BOSTON, MASS., October 28, 1914.

The Collector of Customs, Boston, Mass.

SIR: Replying to protest No. 4898 of F. L. Roberts & Co., against assessment of countervailing duty on certain merchandise imported by them as below, I beg to state as follows:

S/S	Date of entry.	Invoice.	Entry.	Bond.
"Scandinavian",	March 4, 1913,	1059	8344	5551
"Numidian",	June 6, 1913,	853	20706	6716
"Scandinavian",	May 2, 1912,	475	16359	2448
"Numidian",	Dec. 5, 1912,	1311	48987	4664
"Numidian",	Jan. 15, 1913,	2290	1815	5022

The merchandise subject of protest consists of whiskey and rum, returned for duty at the rate of $2.50 per proof gallon under Par. 300 of the Tariff Act of 1909. No countervailing duty was reported by this office.

Papers returned herewith.

Respectfully,

W. T. HODGES, *Appraiser.*

Enclosure.

Record of Submission.

The U. S. General Appraisers.

In the Matter of Protests 772177/8 and 772188/9, of E. LA MONTAGNE'S SONS et al.

Board 3.

NEW YORK, April 19, 1915.

Present: General Appraiser Hay.

Appearances: Comstock & Washburn (by Albert H. Washburn) for the importers; J. J. Mulvaney, for the United States.

The protests are submitted on a statement of facts filed to-day. Thirty days granted to each side to file briefs, and the case continued until the May Term for argument.

May 24, 1915, submitted on oral argument.

17 *Stipulation.*

Before the Board of U. S. General Appraisers.

Board 3.

In the Matter of Protests 772188/9 of G. S. NICHOLAS & Co., 772177/8 of E. La Montagne's Sons, 770684 of S. S. Pierce Co., 766750 of F. L. Roberts, 770830 of Sibley Warehouse Co., 776200 of Francis Draz & Co., 776937 of Francis Draz & Co., 777474 of E. & J. Burke, Ltd., 775120 of Mumm Champagne & Importation Co., on Countervailing Duty on British Spirits.

It is hereby stipulated and agreed by and between the Assistant Attorney General for the United States and counsel for the protestants as follows:

1. Annexed hereto and marked exhibit 1 are copies of the Statutes of the United Kingdom of Great Britain and Ireland as follows:

(*a*) An Act to Grant Excise Duties on British Spirits and on Spirits imported from the Channel Islands, of August 28, 1860 (23 and 24 Vict. Cap. 129);

(*b*) Section 12 of Chapter 98 of 28 and 29 Vict., 1865;

(*c*) An Act to Consolidate and Amend the Law Relating to the Manufacture and Sale of Spirits, August 26, 1880, (43 and 44 Vict.) usually cited as the "Spirits Act of 1880;"

(*d*) Sections 16 and 17 of 44 and 45 Vict. Cap. 12, 1881;

(*e*) An Act to grant Certain Duties of Customs and Inland Revenue, of August 6, 1885 (48 and 49 Vict. Cap. 51);

(*f*) An Act to Amend the Law Relating to the Customs and Inland Revenue and for other Purposes Connected with the Public and Expenditure, of August 26, 1889 (52 and 53 Vict. Cap. 42), usually cited as the "Revenue Act of 1889;"

(*g*) An Act to grant Certain Duties of Customs and Inland Revenue, to Repeal and Alter other Duties, and to Amend the Law relating to Customs and Inland Revenue and to make Provision for the Financial Arrangements of the Year, of May 30, 1895 (58 Vict. Cap. 16);

(*h*) An Act to grant Certain Duties of Customs and In-
18 land Revenue, to Repeal and Alter other Duties, and to Amend the Law relating to Customs and Inland Revenue and to make Provision for the Financial Arrangements of the Year; of July 22, 1902 (2d Ed. VII, Cap. 7);

(*i*) An Act to Amend the Law relating to Customs and Inland Revenue and for other Purposes Connected with Finance, of August 4, 1906 (6th Ed. VII, Cap. 20);

2. Formal proof of the enactment of the acts above mentioned is waived, the copies annexed hereto, for the purpose of these protests, to have the same force and effect as if legally and formally proven.

3. It is agreed that the said acts contain all the statutory law and enactments of the United Kingdom of Great Britain and Ireland with reference to the issues involved in the protests herein, except as may appear in the publications mentioned in the next succeeding paragraph.

4. Annexed hereto are copies of Ham's Year Book, Volume 2, Excise Warehousing with Regulations, 1914, published by special permission of the Honorable Commissioners of Customs and Excise; also Harper's Manual for the Wine and Spirit Trade, 1914; also copy of the Imperial Tariff of 1913 as published by Eyre & Spottiswoode, Ltd., by authority. These publications may be marked Exhibits 2, 3 and 4 for identification respectively. Such portions thereof as may be relied on by either party shall be and become part of the record, subject to objection as to competency, materiality and relevancy. It is further agreed that such portions so incorporated in the record may, so far as competent, material and relevant, have the same force and effect as if legally and formally proven, and as such may be referred to by either party upon the argument.

5. Annexed hereto and marked Exhibit 5 is the statement bearing date of February 3, 1911, made by the British Ambassador to the Secretary of State of the United States submitting the position of the British Government with respect to the imposition of countervailing duties, in its legal aspects.

19 Annexed to such statement and forwarded as part thereof is a statement made by George Young, Secretary in Charge of Commercial Affairs attached to the British Embassy in Washington, setting forth at greater length the contentions of the United Kingdom with respect to the legal aspect of such countervailing duties.

6. Annexed hereto and marked Exhibit 6 is a statement bearing date of March 17, 1911, made by the British Ambassador, having annexed thereto other statements designated respectively Annex A, Annex B, Annex C, Annex D, Annex E, and Annex F.

7. Annexed hereto and marked Exhibit 7 are statements made by Rugus Fleming, United States Consul at Edinburgh, Scotland, bearing date of March 23, 1910; April 28, 1910; June 7, 1910, and August 5, 1913, respectively.

8. Annexed hereto and marked Exhibit 8 is the statement of the British Government dated March 19, 1914, to the effect that no change has been made since 1911 either in the amount or nature of the allowance paid by the United Kingdom on the export of British spirits.

9. Annexed hereto and marked Exhibit 9 is a true copy of the statement of the British Ambassador to the Secretary of State for the United States bearing date of May 1, 1914.

10. Annexed hereto and marked Exhibit 10 is a true copy bearing date of April 18, 1914, of a communication from the Commissioners of Customs and Excise of the United Kingdom addressed to the Secretary to the Treasury.

11. Annexed hereto and marked Exhibit 11 is a true copy of

statements made by one Peter Dawson and by the Whiskey Exporters' Association.

12. The issue involved in these protests received the consideration of the Treasury Department of the United States in T. D. 31229, T. D. 31490, and T. D. 34466.

13. With respect to exhibits 5 and 11, inclusive, above referred to, it is agreed that if the persons whose names are signed thereto were sworn and permitted to testify orally, they would testify to such of said statements as purport to be statements of fact, but the right is reserved by both parties, to object to such statements on the ground of incompetency, immateriality and irrelevancy in the same manner as such objections might be urged if the witnesses were present and testifying. The portion of all such statements which are argumentative merely, are admitted as arguments only, without objection, it being conceded that such portion of all said statements is a presentation of the position taken by the British Government and British manufacturers, and the United States Consul at Edinburgh with respect to the legal aspects of the case.

Dated New York, N. Y., May 7, 1915.

BERT HANSON,
Assistant Attorney-General,
Attorney for the United States.
J. J. M.
COMSTOCK & WASHBURN,
Attorneys for Protestants.
FRANCIS E. HAMILTON,
Attorney for Protestants.

It is agreed that protests 772211/2, 773937 of Alex. D. Shaw, 772173, 772391, 773672, 773922, 775118, Knauth, Nachod & Kühne, be included in above stipulation.

W. P. PREBLE,
Attorney for Protestants.

Endorsed: U. S. General Appraisers. Received May 17, 1915.

Decision of the Board.

(T. D. 35595—G. A. 7758.)

United States General Appraisers.

NEW YORK, July 16, 1915.

In the Matter of Protests 772188, etc., of G. S. NICHOLAS & Co. et al., Against the Assessment of Duty by the Collectors of Customs at the Ports of New York, etc.

Before Board 3.

HAY, General Appraiser:

The merchandise which is the subject of these protests is whiskey, gin, vermuth, champagne, rum, and still wine. No question is

raised as to the correct classification of this merchandise.
21 The only question arising grows out of the imposition by the collector of the countervailing duty provided for in paragraph E of section 4 of the Act of 1913, which reads as follows:

Par. E. That whenever any country, dependency, colony, province or other political subdivision of government shall pay or bestow, directly or indirectly, any bounty or grant upon the exportation of any article or merchandise from such country, dependency, colony, province, or other political subdivision of government, and such article or merchandise is dutiable under the provisions of this act, then upon the importation of any such article or merchandise into the United States, whether the same shall be imported directly from the country of production or otherwise, and whether such article or merchandise is imported in the same condition as when exported from the country of production or has been changed in condition by remanufacture or otherwise, there shall be levied and paid, in all such cases, in addition to the duties otherwise imposed by this act, an additional duty equal to the net amount of such bounty or grant, however the same be paid or bestowed. The net amount of all such bounties or grants shall be from time to time ascertained, determined, and declared by the Secretary of the Treasury, who shall make all needful regulations for the identification of such articles and merchandise and for the assessment and collection of such additional duties.

This paragraph originated in section 5 of the Act of 1897, and was copied literally into section 6 of the Act of 1909, and into paragraph E of the Act of 1913, above quoted. No question was raised as to the manner of the application of this paragraph, but its applicability to the merchandise which is the subject of this protest is the question before us. The net amount of the bounties or grants which it is claimed by the Government arise out of the English law in the exportation of the merchandise in question has been ascertained by the Secretary of the Treasury, and the regulations made by him for the identification of the merchandise in question have all been complied with. The solitary question is, Do the English statutes provide for the payment or bestowal by the British
22 Government either directly or indirectly of any bounty or grant upon the exportation of the merchandise in question? The case is submitted upon a stipulation which, together with exhibits attached thereto, and which become thereby a part of the stipulation, constitutes the record of facts upon which the case must be decided. Among these exhibits is the English Spirits Act and the regulations under which it is administered, together with the diplomatic correspondence and many papers and documents relative thereto. It would be difficult to abridge these documents, and to set them out in extenso would tend only to confuse the issue. So far as the decision of this case is concerned it seems to us only necessary to state that under the English law and its administration, spirits of the kind here under consideration are subject to an excise duty of 14s. 9d. per gallon; that such spirits when exported from England are not only relieved of this duty but in addition there is

an allowance made of 3d. per gallon upon plain spirits and 5d. per gallon upon compound spirits. It is also provided that where, under certain circumstances, spirits may be used in the arts, or manufacture, or in universities, or colleges, and when used as naval or ship's stores, they shall be exempt from duty and that in some of these cases an allowance of 3d. or 5d. may also be made. It is not the province of a court of the United States to construe a foreign law, and it is a little difficult to determine from the British statutes in question the exact status of spirits that are not domestically consumed nor exported, but are used in the arts, or industries, nor do we conceive that to be necessary. The fact remains that all spirits of the class under consideration, manufactured and consumed in the ordinary way in Great Britain, that is, as a potion or a beverage, bear an excise tax of 14s. 9d. per gallon; that all spirits of the same class that are exported are relieved from the payment of this excise tax, and, in addition thereto, an allowance of 3d. to 5d. is made to the exporter. Does this constitute a bounty or grant within the meaning of paragraph E? is the question for us to decide,
23 and, if it does, is that construction to be changed by the fact that for certain limited domestic uses some concession is made to the manufacturer of the spirits?

The policy or purpose of the British law is not a subject with which we can deal. In the wisdom of the British lawmakers the complicated provisions of this statute were doubtless deemed necessary and advisable to safeguard their revenues, and whether the purpose of these provisions was to create a bounty or grant upon the export of spirits like those in question is not a matter into which we may inquire. Our inquiry is: Is such the effect of this statute and its administration?

We are urged by counsel in the decision of this question to consider the economic policy of Great Britain and the United States. While it is not the function of the judicial office to enter, in a controversial sense, into the economic policy of the country, it is eminently proper in determining the meaning of statutes to inquire into the history of the times which may indicate the policy of Congress in its enactment. It is true that for more than a generation the policy of Great Britain has been that of free trade and that for as long a time the settled policy of the United States has been that of protection. In the act of 1897, where the provision here under consideration first appears, this policy of protection was affirmatively stated in the title. While we may not inquire into the purposes but only the effect of a foreign law in determining the meaning of a statute of the United States which it is our function to construe, we may with perfect propriety look to its purpose. Section 5 of the Act of 1897 is undoubtedly a part of the national policy as declared in the title of the law "to encourage the industries of the United States." Its purpose was to prevent an unequal competition in our domestic market with the products of other countries, and in
24 determining its application to any state of facts this policy should be kept in mind, for its reënactment by Congress with-

out any change of verbiage indicates the adoption of the same general policy to this extent at least.

With great learning and equal skill the attorney for the importer has marshaled historic facts and precedents to convince us that it is our duty to place a narrow and technical construction upon the use of the word "bounty" and to indicate to us that under this technical meaning the circumstances out of which this case arises do not constitute a bounty. While it is true that words, the meaning of which have been definitely settled by judicial decision, should when used in a statute be given the meaning thus settled, we should not give to words used in a statute a narrow or technical meaning if such would defeat the very purpose of the law when a broader and more liberal definition would effect that purpose. The law regards the substance, not the shadows—acts done, not the names by which these acts are designated.

It seems quite clear to us that if the spirits in question may be sold in the United States at a less price or at a greater profit than they can in England, the very purpose of paragraph E is defeated. If the manufacturer of these spirits can sell them for consumption in England only after payment of an excise tax of 14s. 9d., and can sell them in the United States without paying this tax and receive the additional allowance of 3d. or 5d. per gallon, he can sell them in the United States for a less price than he can in England, or if he sells them at the same price he will derive a larger profit. Many years ago when this paragraph was new to tariff laws it received a construction by this board which is, we think, the view we have just taken. Robert E. Downs's case, G. A. 4912 (T. D. 22984). This board there held a complicated sugar law of Russia to constitute a bounty or grant within the meaning of the paragraph of law under consideration in the case at bar. The board in that case said:

25 Our conclusion, therefore, is that a bounty or grant, within the meaning of Section 5 of our tariff act, has been paid or bestowed by the Russian Government upon the exportation of this sugar, so as to work a benefit or advantage to the Russian sugar exporter as follows:

First. Upon the exportation of the sugar, the Government remitted or refunded the excise tax due thereon, or otherwise canceled the indebtedness of the sugar manufacturer, so that he was enabled to place his product upon the market free from the burden of either the regular or additional excise tax.

Second. The certificate which the Government issued to him upon the exportation of his sugar had a substantial market value, and was transferable, and operated as a premium, grant, bonus, or reward.

This language it occurs to us applies to the case at bar. The spirits in question are exported free from the excise tax, while if sold for consumption in Great Britain they are burdened with the excise tax. In addition, if sold for export an allowance of 3d. or 5d., depending upon the kind of spirits, is made to the exporter, which he does not receive if sold for domestic consumption. This places the merchandise in question in the market of the United States upon better

terms than it enters the market of Great Britain. This fact itself in our judgmen constitutes a bounty or grant within any reasonable meaning of those words. Robert E. Downs's case, supra, finally reached the Supreme Court, where the decision of the Board of General Appraisers was affirmed. Downs v. United States (187 U. S. 496). While the method by which the Russion domestic tax was levied and collected differed materially from that of the British tax here under consideration, the very language of the learned justice who decided the case fits, we think, the circumstances of the case at bar:

It is practically admitted in this case that a bounty equal to the value of these certificates is paid by the Russian Government, and the main argument of the petitioner is addressed to the proposition that this bounty is paid, not upon exportation, but upon
26 production. The answer to this is that every bounty upon exportation must, to a certain extent, operate as a bounty upon production, since nothing can be exported which is not produced, and hence a bounty upon exportation, by creating a foreign demand, stimulates an increased production to the extent of such demand. Conversely, a bounty upon production operates to a certain extent as a bounty upon exportation, since it opens to the manufacturer a foreign market for his merchandise produced in excess of the demand at home. A protective tariff is the most familiar instance of this, since it enables the manufacturer to export the surplus for which there is no demand at home. If there were no tariff at all, and the expense of producing a certain article at home were materially greater that the expense of producing the same article abroad, there would be none produced, and, of course, none to export. But with the aid of such tariff production would be stimulated, and might become so much greater than the home demand that a manufacturer would look to foreign markets for his surplus. In the case of Russian sugar the effect of the import duties is much enhanced by the fact, that the supply of free sugar from the home market being limited, the selling price is very remunerative, and each producer has therefore an interest in placing as much sugar as he can on the home market; and as the total amount of free sugar is distributed among all the manufactories in proportion to their entire production, it may become to their interest to export their surplus even at a loss, if such loss can be compensated by the profits on sugar sold in the home market. This would make the tariff a bounty upon exportation, but a mere incident to its operation upon production. But if a preference be given to merchandise exported over that sold in the home market, by the remission of an excise tax, the effect would be the same as if all such merchandise were taxed, and a drawback repaid to the manufacturer upon so much as he exported. If the additional bounty paid by Russia upon exported sugar were the result of a high protective tariff upon foreign sugar, and a further enhancement of prices by a limitation of the amount of free sugar put upon the market, we should regard the effect of such regulations as being simply a bounty upon production, although it might incidentally and remotely foster an increased exportation of sugar; but where in

addition to that these regulations exempt sugar exported from
27 excise taxation altogether, we think it clearly falls within the definition of an indirect bounty upon exportation.

Again, the learned justice sums up the whole matter in this brief sentence:

When a tax is imposed upon all sugar produced, but is remitted upon all sugar exported, then, by whatever process, or in whatever manner, or under whatever name it is disguised, it is a bounty upon exportation.

It seems scarcely necessary for us to consider the contention of the importer's counsel based upon the departmental construction given to this paragraph of the law in the Assistant Secretary's letter (T. D. 31490) and the customs memoranda which is made exhibit 9 in this case. Upon that question, in the case of United Cigar Stores Co., G. A. 7026 (T. D. 30643), we said:

It is true that departmental construction, like long acquiescence, gives meaning to a statute which should not lightly be disturbed by the courts. * * * We think, however, it will not be disputed that, if one of the executive departments had placed upon a statute a construction in conflict with the judicial interpretation of that statute (which is not true in the case at bar), Congress, in reenacting that statute, would be held to have enacted it with the meaning given to it by the courts rather than that given to it by the department.

So we conclude in the case at bar that paragraph E having been, in our judgment, definitely construed by this board in Downs' case, supra, and by the Supreme Court in Downs v. United States, supra, it was the construction there given the law which Congress is presumed to have adopted rather than that given it in the brief letter of the Assistant Secretary of the Treasury.

We have not thus far considered the only respect in which the facts of the case at bar radically differ from those of the sugar
28 bounty case (Downs v. United States, supra). In the case at bar a part of the spirits that are not exported are also relieved from the excise tax, and some also receive the allowance made to spirits exported. The record is not entirely clear as to what proportion this is of the whole domestic consumption of spirits of this character. It is quite apparent, however, that it is a very small proportion, and the fact remains, which in our judgment is the controlling fact, that the very large part of the spirits of the class here under consideration that are sold to be consumed in Great Britain has to pay the excise tax, and that that which is exported does not, and, in addition thereto, receives the allowance heretofore stated.

In levying the countervailing duty provided for in paragraph E, supra, the collector has treated only the allowance of 3d and 5d per gallon as a bounty or grant. The Domestic excise tax of 14s. 9d. per gallon is not treated by him as constituting a bounty, doubtless for the reason that the rule in United States v. Passavant (169 U. S., 16) was applied in finding the value of these spirits for duty purposes and the amount of the domestic tax was added to make market value. We are not entirely certain that this takes the excise tax out

of the provisions of paragraph E, but as the question is not before us we leave it undecided. As to the allowance of 3d. and 5d. made on export, and which the collector has adopted in levying countervailing duty, there is no question in our minds but what it brings the case within the purview of paragraph E. The protests are overruled.

BYRON S. WAITE,
EUGENE G. HAY,
Board of U. S. General Appraisers.

New York Protests.

Protest.	Importer.
772186/22745	G. S. Nicholas & Co.
772189/21921	G. S. Nicholas & Co.
[illegible]	
772177/21691	E. LaMontagne's Sons.
772179/25266	E. LaMontagne's Sons.
772474/3167	E. & J. Burke, Ltd.
770927/2033	Francis Drue & Co.
773120/2569	Maman Champagne & Importation Co.
773118/4485	Kenneth, Nachod & Kühne.

Boston Protests.

770094/3295	S. S. Pierce Co.
760750/4899	F. L. Roberts.

Chicago Protest.

770090/55271	Sibley Warehouse & Storage Co.

Los Angeles Protest.

770200/1365	Francis Drue & Co.

Endorsed: United States Court of Customs Appeals. Filed Oct. 8, 1915. Arthur R. Shelton, Clerk.

Stipulation.

United States Court of Customs Appeals.

No. 1594.

G. S. Nicholas & Co. et al., Appellants,
vs.
The United States, Appellee.

It is hereby stipulated and agreed by and between the attorneys for the appellants and the appellee:

That so much of the record in the above entitled case as is embraced within Exhibit 1 of the stipulation of May 1, 1915, filed before the Board, consisting of printed copies of the Statutes of the United Kingdom of Great Britain and Ireland need not be printed in the record and may be referred to by either party upon argument with the same force and effect as if printed;

That so much of the record as is embraced within Paragraph 4 of the aforesaid stipulation, consisting of the publications therein enumerated need not be printed, it being distinctly understood, however, that such portions of said publications as may be
30 relied upon by either party shall be subject to the objection as to competency, materiality and relevancy, as set forth in said Paragraph 4.

October 5, 1915, approved.

COMSTOCK & WASHBURN,
Attorneys for Appellants.

BERT HANSON,
Attorney for Appellee

M.

R. M. MONTGOMERY,
Presiding Judge.

Washington, Oct. 6, 1915.

Endorsed: United States Court of Custom Appeals. Filed Oct. 6, 1915. Arthur B. Shelton, Clerk.

Exhibit 5.

British Embassy.
Washington, February 3, 1911.

To Honorable P. C. Knox, Secretary of State, etc., etc., etc.

Sir: I have communicated by cable with His Majesty's Government in regard to the conclusion arrived at by the Secretary of the Treasury as notified to this Embassy in your communication No. 1073 of the 28th instant to the effect that allowances made in Great Britain in respect to whiskey taken from bond for export are bounties or grants on exports within the meaning of Section 6 of the Tariff Act of 5th August, 1909.

The question has hitherto been dealt with through the United States Embassy in London but I am now instructed to represent to you the views of His Majesty's Government in — matter.

With this object I would wish to admit for the consideration of yourself and the competent authorities of the United States Government certain aspects of the question and certain arguments against the conclusion above referred to which merit full consideration before any action is taken on such conclusion.

The intention of Section 6 of the United States Tariff Act unquestionably is to prevent prejudice to American industry
31 by the competition of imports artificially stimulated or "boun-

ty-fed" by foreign Governments. But in this case there can be no practical apprehension of such prejudice for the British allowances in question have been operating for half a century and Section 6 is the same in effect as Section 5 of the Tariff of 1897; but the application to those allowances of a countervailing duty has never been contemplated until the question of the applicability of the enquiries made them under Section 2 in regard to the application of the Minimum rates to British goods.

Similarly, there can be no presumption that the intention of these allowances is to artificially stimulate production in the industry concerned. Such intervention in favour of any industry is contrary to the economic principles upon which the fiscal policy of His Majesty's Government has been based during and for many years preceding the existence of these allowances. It is in affirmation of these principles upon which the fiscal policy of His Majesty's Government has been based during and for many years preceding the existence of these allowances. It is in affirmation of these principles that the Act instituting the allowances (23-24 Vic. ch. 129) prefaces their establishment with the words "In consideration of the loss and hindrance caused by excise regulations," etc. So far from these allowances being intended to protect or foster a domestic industry in order to strengthen it against competition abroad they owe their origin to the adoption by Great Britain of free trade principles. The necessity of raising revenue otherwise than by import duties of a protective character made a heavy excise upon spirits indispensable and that in turn caused the establishment of a complicated structure of fiscal regulations and administrative processes for the distilling industry. An excise has the highest cost of collection in proportion to the return of any tax—and this cost of collection greatly adds to the expense of carrying on the industry. As compensation for the heavy pressure of the excise and because spirits are articles whose large consumption it is not desired to en-
32 courage the industry is accorded in the home markets a fair chance with foreign producers by an import duty, which restores the balance as between the home and the foreign distiller and on export to foreign markets is allowed a drawback for the loss and hindrance to which the exported product has been subjected together with that for home consumption. Drawbacks of duty ac-orded by protectionist States are not subjected to retaliatory measures and it is manifestly inequitable that an analogous allowance due, as has been shown to a preference for free trade over protectionist institutions should be singled out for penalty. This exposition of the character and history of the allowances should be sufficient to show that, if Section 6 of the Tariff Act be similarly examined, it will be found that they do not come within the meaning and scope of the United States Statute in question. It may be assumed, consequently that there is every disposition on the part of the United States authorities to give a fair and broad interpretation to the letter of the law, and to, adopt any reasonable interpretation of it that would prevent what would amount to a perversion of its purpose.

There are few precedents for the application of Section 6, and none

for its enforcement as against such allowances as these. The application of it to Russian "bounty-fed" sugar is not in point, for although the bounty in this case included compensation for an excise, yet it comprised also further concessions which in character and intention were clearly bounties. The decision was therefore justifiable upon that ground and did not need to deal with the case in those other points in which it resembled this case. Nevertheless the applicability of Section 6 was contested in the Courts and involved a long litigation and great expense to all parties before it was finally sustained. That its applicability would not be sustained in this case seems probable; for a refund of taxation is a drawback and not a "bounty or grant," and it can be shown that the compensation received does not exceed and is not even equivalent to the loss imposed. Where there is no net benefit there can not be a "bounty or grant."

33 I would therefore venture to suggest that if evidence, satisfactory to the competent authorities of the United States Government can be produced showing that this allowance does no more than cover the losses imposed on the industry by fiscal regulations, imposed for revenue raising purposes, that such evidence be accepted as proof that these allowances do not come within the meaning of the term bounty in the proper sense of the word. Evidence of this nature will be submitted as soon as possible but can not well be obtained before the date fixed for putting Section 6 into force. I have therefore to urge very strongly on your favorable consideration—that in view of what has been here set forth the enforcement of the order should be either postponed indefinitely or to such a date as would permit of an enquiry into the evidence above referred to.

I have the honor to be, with the highest consideration, sir, your most obedient servant,

JAMES BRYCE.

Countervailing Duty on British Spirits.

Legal Aspects.

The leading cases illustrative of the application of the section of the United States Tariff imposing countervailing duties are those of Dutch and Russian sugars—none of the very few other cases in which the section has been applied—such as fish from St. Pierre, Chilean wine, etc., throw any additional light on its interpretation.

The protectionist principle underlying the intention of the Section is clearly to counteract any Government subsidy to a foreign industry such as would give it an artificial advantage in competition with American industry. But a mere remission in whole or in part of a burden imposed by that foreign Government on the industry does not constitute such an advantage. Doubtless the wording in the section "bounty or grant" is a wide one, but width was given it merely to enable it to cover all the various fiscal devices to which a protectionist policy resorts in order to foster home industries, and

not in order that the policy of inspiring the section should be strained to a point at which it becomes a perversion of its real purpose.

34 Thus in the Supreme Court decision in the Russian case (Supreme Court Reporter, Vol. 23, p. 223), the words "bounty" and "bonus" are used as synonymous, and in the Supreme Court decision in United States v. Passavant (18 Supreme Court Reporter, p. 219), "bonus" is used as synonymous with "drawback." But the preservation of the whole principle and purpose of Section 6 of the Tariff Act lies in maintaining the distinction between a "bounty" and a "drawback."

This distinction has moreover been properly observed in the leading cases under consideration.

In the case of Netherlands sugars (United States v. Hills Brothers) (vide Treasury Decisions, Volume IV, No. 43, p. 26), and (107 Fed. Rep., p. 107), the Circuit Court of Appeals did not hold that the mere remission of the excise tax by the Government of the Netherlands constituted a bounty, but that the excess of the so-called "rebate" over the amount of the tax did constitute a bounty.

Again in the case of Russian sugars (United States v. Downs) (Supreme Court Reporter, Volume 23, page 222), the imposition of the countervailing duty was properly sustained by the Supreme Court not because the Russian regulations remitted the excise tax on exported sugars, but because they also allowed the exporter a certificate of exportation, carrying with it a privilege of exemption from taxation which is transferable and has a substantial market value.

It was to meet such cases of indirect bounties as these that a wide wording was used in Section VI and not in order to allow its application to simple drawbacks or duty exemptions as in use in the United States or United Kingdom.

In the United States under Section 3329, Revised Statutes, as revised (21 Stat., 145), distillers of spirits can obtain export certificates in the nature of a quittance of internal revenue taxes or other burdens which carry certain rights in case of reimportation. But nowhere would American spirits therefore be held to be bounty-fed.

35 Now to take these British allowances. They were first introduced in 1860 when the loss caused to British distillers by the elaborate excise machinery had been established by the commercial treaty with France which admitted French spirits at a rate of duty equal to the British excise plus a surtax of 2d. per gallon on plain and 3d. per gallon on compound spirits, estimated as equivalent to the loss caused by the excise to home distillers; while at the same time the excise was raised. In 1902 these allowances were raised to 3d. and 5d., respectively, but are still, as can probably be satisfactorily shown, inadequate to cover the outlay caused the industry.

To penalize these drawbacks is therefore equivalent to penalizing the United Kingdom for its liberal treatment of and low duties on foreign imports. But for this free trade policy no high excise on spirits would have been required, no elaborate regulations embarrassing to production would have been established and no compen-

sating allowances would have been paid. There can be no reason in this case for stretching the wording of the * * * section so as to make it cover an indirect bounty; because it has been contrary to the first principles of the policy of the United Kingdom throughout and preceding the existence of those allowances to give any such artificial stimulus to home industry. The purpose of the allowance is plainly stated in the Act of 1860 instituting them as being "in consideration of loss and hindrance caused by excise regulations."

This would seem to be clearly a case in which the maxim of Mr. Justice Story should be followed that "laws imposing duties are never construed beyond the natural import of the language" (3 Supreme Court, 384).

GEORGE YOUNG,
Secretary in Charge of Commercial Affairs.

British Embassy, Washington, February 7, 1911.

EXHIBIT 6.

Copy H.

BRITISH EMBASSY,
WASHINGTON, March 17, 1911.

The Honorable Philander C. Knox, Secretary of State.

36 SIR: In a note under date of February 8, you were good enough to inform me of the reference to the Treasury Department of arguments submitted by this Embassy against the conclusion arrived at by the Secretary of the Treasury that certain allowances granted in Great Britain to spirits on export came within the meaning of Section 6 of the Tariff Act and asking for a postponement to permit of the production of proof that these allowances were not bounties.

As you are, doubtless, aware, a postponement of the application of the order for one month was granted, which has been sufficient to permit the Embassy to obtain the required proof. It may not, however, be enough to allow of the full and careful reconsideration of the question which its intrinsic international importance and its commercial equities require. Unless, therefore, the new data now supplied is found to be so obviously conclusive that a decision can be come to before the date fixed for imposition of the countervailing duty on March 22, I would strongly represent the propriety of a further postponement.

I trust, however, that this further protraction of the question to the prejudice of the most important branch of the commerce between our respective countries may not be necessary. His Majesty's Government believes that a mere perusal of the arguments and evidence submitted in the British case herewith inclosed can not fail to convince the competent authorities that the proposed action was taken under insufficient information. The full information now submitted would have been supplied at an earlier date had it not been

that His Majesty's Government considered that the brief statement of the purpose and effect of these allowances supplied through the American Embassy in London would be sufficient to indicate that Section 6 of the Tariff Act was not applicable. It was with great surprise that His Majesty's Government learned that the United States Government really contemplated the possibility of applying this section. The branch of British commerce affected is one of such importance that any action of this nature
37 directed against it would have an unfortunate effect on the relations between the two business communities. This surely supplies a ground for a careful reconsideration of the present position and of the applicability to it of the United States Statute, even apart from the especial claim of Great Britain to favorable treatment as the only remaining country which the products of the United States are permitted to enter free of any duty, except that on tobacco, imposed solely for the purpose of raising revenue.

The effort now made on our part to clear up the misunderstanding on this latter point as to the applicability of the Act to these allowances will, I can scarcely doubt, meet with a prompt response from the competent authorities of the United States Government.

I have the honor to be, with the highest consideration, sir, your most obedient servant,

JAMES BRYCE.

Exhibit 6.

Annex A.

Allowances on British Spirits Exported.

The question having been raised by the Government of the United States of America as to the exact character of the allowances now paid on the exportation of British spirits, we have thought it advisable, as the Department responsible by law for the administration of the spirit duties, to place on record the following statement of the facts, from which it will appear that, neither in intention nor in fact, can these allowances be regarded as bounties.

Origin of the Allowances.

These allowances have formed an essential feature of our system of taxing spirits ever since 1860, when, in consequence of the Cobden treaty with France, the former protective duties were abolished. It is a significant fact that the adoption of the allowances as part of our fixed system, so far from being associated with any idea
38 of a bounty, took place at the very time when free-trade principles secured the most complete acceptance in this country.

Object of the Allowances.

The object of the allowances originally was, and still is, not to place the manufacturer of British spirits in a position of advantage,

as compared with his foreign competitor in the foreign market, but to prevent him from being placed in a position of disadvantage in that market as a result of the expenditure which his own Government, for its own ends, forces him to incur in the process of manufacture.

The duty on British spirits is very heavy, and involves the necessity of special precautions being taken to prevent any spirit escaping the duty. These precautions include the imposition upon the manufacturer of a number of statutory requirements and restrictions in connection with his plant and methods of manufacture, which considerably increase the cost of manufacture. The allowances on exportation are intended to be an equivalent and no more than an equivalent of this extra cost.

This object has been kept in view in fixing the actual amount of the allowances.

The allowances were originally fixed by Mr. Gladstone in 1860 after prolonged consultation between the Revenue Authorities and the traders affected. The traders were required to formulate their claims in the fullest detail, stating what restrictions in their opinion increased the cost of manufacture and the exact amount of extra cost attributable to each; every item was closely criticised by the Revenue Authorities, some being disallowed altogether, and others allowed in whole or in part; with the result that the allowances were fixed at a figure which the Revenue authorities accepted as not exceeding the loss caused by revenue restrictions. In the period since 1860 the rates have been on more than one occasion modified
39 as necessity arose, but the same object, as above described, has been kept in view, and the same procedure followed in order to arrive at the exact rates to be allowed.

(Signed) L. N. GUILLEMAND,
Chairman of the Board of Customs and Excise.
F. S. PARRY,
Deputy Chairman of the Board of Customs and Excise.

Signed at the Board of Customs and Excise in the presence of—
(Signed) J. P. BYRNE, *Secretary.*

Custom House, London, 1 March, 1911.

Statement of British Case Against the Imposition of a Countervailing Duty on Spirits.

The note addressed to the United States Government by the Embassy on February 3, opened the British argument as follows:

"The intention of Section 6 of the United States Tariff Act unquestionably is to prevent prejudice to American industry by the competition of imports artificially stimulated or 'bounty-fed' by foreign governments. But in this case there can be no practical apprehension of such prejudice for the British allowances in question have been operating for half a century and Section 6 is the same in effect as Section 5 of the Tariff Act of 1897: but the applica-

tion to those allowances of a countervailing duty has never been contemplated until the question of the applicability of the section was raised last year presumably as a result of inquiries made then under Section 2 in regard to the application of the minimum rates to British goods.

"Similarly, there can be no presumption that the intention of these allowances is to artificially stimulate production in the industry concerned. Such intervention in favor of any industry is
40 contrary to the economic principles upon which the fiscal policy of His Majesty's Government has been based during and for many years preceding the existence of these allowances. It is in affirmation of these principles that the Act instituting the allowance (23 and 24 Vic. c. 129) prefaces their establishment with the words 'in consideration of the loss and hindrance caused by excise regulations,' etc. So far from these allowances being intended to protect or foster a domestic industry in order to strengthen it against competition abroad, they owe their origin to the adoption by Great Britain of free trade principles. The necessity of raising revenue otherwise than by import duties of a protective character made a heavy excise upon spirits indispensable and that in turn caused the establishment of a complicated structure of fiscal regulations and administrative processes for the distilling industries. An excise has the highest cost of collection in proportion to the return of any tax—and this cost of collection greatly adds to the expense of carrying on the industry. As compensation for the heavy pressure of excise (and because spirits are articles whose large consumption it is not desired to encourage) the industry is accorded in the home markets a fair chance with foreign producers by an import duty, which restored the balance as between the home and the foreign distiller; and on export to foreign markets is allowed a drawback for the loss and hindrance to which the exported product has been subjected, together with that for home consumption. Drawbacks of duty accorded by protectionist States are not subjected to retaliatory measures and it is manifestly inequitable that an analogous allowance due, as has been shown to a preference for free trade over protectionist institutions should be singled out for penalty."

To penalize these drawbacks or allowances is indeed equivalent to penalizing the United Kingdom for its low duties on American products. But for this liberal treatment of foreign imports
41 into the United Kingdom no high excise on spirits would have been fiscally requisite, no elaborate and economically expensive system of internal revenue regulations would have been thereby required, and no compensation for this expense to exports would have resulted. Confirmation of this argument in the form of an authoritative official statement signed by the competent officers of His Majesty's Government will be found in document A, herewith annexed. Further evidence of the object and policy of these allowances seems scarcely necessary in view of the categorical character and official source of the document A, above mentioned. But an extract from the report of the department committee on Industrial Alcohol, published in 1905, is appended as annex B, as evi-

dence in point, but without any relation in purpose to the present controversy.

The Embassy note continues:

"The exposition of the character and history of the allowances should be sufficient to shew that—if Section 6 of the Tariff Act be similarly examined, it will be found that they do not come within the meaning and scope of the United States statute in question. For it may be assumed that there is every disposition on the part of the United States authorities to give a fair and broad interpretation to the letter of the law, and to adopt any reasonable interpretation of it that would prevent what would amount to a perversion of its purpose.

"There are few precedents for the application of Section 6, and none for its enforcement as against such allowances as these. The application of it to foreign 'bounty-fed' sugars is not in point, for although the bounty in these cases included compensation for an excise, yet it comprised also further concessions which in character and intention were clearly bounties. The decisions were therefore justifiable upon that ground and did not need to deal with the cases in those other points in which they resembled this case."

42 This important point that remission in whole or in part of a burden imposed by the foreign government has not been and should not be held to constitute a "bounty" within the meaning of the Tariff Act is dealt with in the memorandum herewith annexed as C.

The note continues:

"Nevertheless the applicability of Section 6 was contested in the courts in both cases and involved a long litigation and great expense to all parties before it was finally sustained. That its applicability would not be sustained in this case seems probable; for a refund of taxation is a drawback and not a 'bounty' or 'grant,' and it can be shewn that the compensation received does not exceed and is not even equivalent to the loss imposed. Where there is no net benefit there can not be a 'bounty' or 'grant.' I would therefore venture to suggest that if evidence satisfactory to the competent authorities of the United States Government can be produced showing that this allowance does no more than cover the losses imposed on the industry by fiscal regulations, imposed for revenue raising purposes, that such evidence be accepted as proof that these allowances do not come within the meaning of the term 'bounty' in the proper sense of the word."

This evidence has now been obtained and will, it is confidently expected, be found to be of the most complete and conclusive character.

In the first place the official statement, herewith annexed as D, states categorically on the authority of the competent officers of His Majesty's Government that "We have no hesitation in certifying that at the present time the allowances paid on export of British spirits are in no sense bounties, and that the existing rates of 3d. and 5d. are no higher than is necessary * * * to recoup the exporter in respect of the loss and hindrance caused by excise regulations—."

It would seem unnecessary to add anything to so authoritative a pronouncement, but further data may be of interest, though
43 it can hardly add to the proof. Such data will be found in the evidence given before the department committee on Industrial Alcohol, above referred to in 1905, an extract of which is annexed for convenience, Annex E. The purport of this enquiry was, of course, not to the present point, but the evidence in so far as it bears on the point is none the less valuable.

Further, and in order that the United States Government may have evidence of the most formal character possible from the sources themselves of information on the subject affidavits have been obtained from the principal firms of distillers in the United Kingdom to the effect that the allowances do not in fact compensate the industry for the losses due to excise regulations. These affidavits are inclosed in Annex F.*

They are headed by one received through the foreign office and the Incorporated Society of Industries, which relates to the firm of James Buchanan and Co., John Dewar and Sons, Mackie and Co., John Walker and Sons. Other, supplemented by a further affidavit from the Manager of Messrs. Dewar. Other affidavits represent, Andrew Usher and Co., Bullock, Lade and Co., and others, Slater Roger and Co., Highland Distilleries Co., Tanqueray Gordon and Co., John Power and Son, J. Hopkins and Co., J. Calder and Co., and others, Distillers Co., Ltd., of Edinburgh, Lowrie and Co., Dublin Distillers Co., Cork Distillers Co., Dunville and Co., of Belfast, all of which have been sworn before United States Consular Officers. Also the following affidavits, sworn before Commissioners of Oaths—Old Bushmills Co., of Belfast, Peter Dawson Co., Henry White and Co., W. Williams and Sons.

The British case against imposition of these countervailing duties may therefore be summarized as follows:

44 *a.* No prejudice to American industry from bounty-fed competition results now or ever has resulted from these allowances.

b. The allowances are not bounties in their origin or object.

c. They originate on the contrary in a policy of free trade and to penalize them will be to penalize liberal treatment of American products and not to promote American industry.

d. Therefore the policy inspiring the countervailing duty does not apply to them and this is confirmed by the precedents of its application.

e. This is evidently and equitably so because the allowances do not even compensate the losses they are intended to reimburse, as is abundantly proved.

f. That in view of the complete and conclusive data now submitted, it would be neither a correct application of the law of the United States nor a just proceeding in commercial foreign policy to

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* The originals of these affidavits have been forwarded direct to the Treasury.

countervail these allowances as proposed on the incomplete information previously before the United States Government.

BRITISH EMBASSY, WASHINGTON, March 17, 1911.

To the Lords Commissioners of His Majesty's Treasury:

We have the honor to forward herewith, in compliance with Your Lordship's instructions, a Memorandum dealing with the subject of "Allowances on British Spirits Exported."

(Signed) L. N. GUILLEMAND.
F. S. PARRY.

Customs House, London, 1st March, 1911.

EXHIBIT 6.

Annex B.

Extract from Report of Departmental Committee on Industrial Alcohol.

"That something more is required in order to place spirits used as an instrument or material of manufacture on a footing satisfactory in a matter of cost. Anything in the nature of a bounty is undesirable. But seeing that on the price of spirit the very existence of certain industries may depend, and that for all industries using alcohol the price of the spirit is an important factor for that portion of trade that lies outside the home market, we are strongly of opinion that it is desirable to make such arrangements as will free the price of industrial spirit from the enhancement due to the indirect influence of the spirit duties. It would surely be disastrous if, to the mischief that the drinking of alcohol causes by diminution in the efficiency of labour, the taxation of alcohol should be allowed to add the further mischief of narrowing the openings for the employment of labour.

"In our opinion, there is only one way in which the influence of the spirit duties can be satisfactorily counteracted in favor of industrial alcohol. To diminish the excise restrictions on the manufacture of alcohol might mitigate the influence, but probably not to any great extent. For with a duty of over 1,000 per cent on the prime cost of an article, revenue control must of necessity be strict. Moreover, the gain to industry would be made at the risk of the revenue, and a duty that yields over £20,000,000 per annum to the Exchequer is a public interest that can not be trifled with. To relieve imported spirit from the surtax which is needed to counterbalance the burden imposed on production in this country by the excise regulations would be manifestly unfair; and its effect would be to give to the State-aided spirits from Germany or Russia a practical monopoly of the market in this country for industrial spirit. The only adequate course, it seems to us, *it* to neutralize, for industrial spirit, the en-

hanced cost of production due to excise control, in the same way as the enhanced cost is neutralized for exports, viz: by granting an allowance on such spirit at such rate as may from time to time be taken as the equivalent of the increase in cost of production due to revenue restrictions. At the present time, the rate is taken at 3d
46 per proof gallon for plain spirits, and the allowance would accordingly be at this rate, and should be paid equally on all industrial spirit whether it be of British or of foreign origin."

EXHIBIT 6.

Annex C.

Memorandum. Countervailing Duty on Brit-sh Spirits. Legal Aspects.

The leading cases illustrative of the application of the section of the United States tariff imposing countervailing duties are those of Dutch and Russian sugars—none of the very few other cases in which the section has been applied—such as fish from Saint Pierre, Chilean wine, etc., throw any additional light on its interpretation.

The protectionist principle underlying the intention of the section is clearly to counteract any Government subsidy to a foreign industry such as would give it an artificial advantage in competition with American industry. But a mere remission in whole or in part of the burden imposed by that foreign government on the industry does not constitute such an advantage. Doubtless the wording in the section "bounty or grant" is a wide one, but width was given it merely to enable it to cover all the various fiscal devices to which a protectionist policy resorts in order to foster home industries, and not in order that the policy inspiring the section should be strained to a point at which it becomes a perversion of its real purpose.

Thus in the Supreme Court decision in the Russian case (Supreme Court Reporter, Vol. 23, p. 223), the words "bounty" and "bonus" are used as synonymous with "drawback." But the preservation of the while principle and purpose of Section 6 of the Tariff Act lies in maintaining the distinction between a "bounty" and a "drawback."

This distinction has moreover been properly observed in the leading cases under consideration.

47 In the case of Netherlands sugars (U. S. v. Hills Brothers) (vide Treasury Decisions, Vol. 4, No. 43, p. 26) and (107 Fed. Rep., p. 107), the Circuit Court of Appeals did not hold that the mere remission of the excise tax by the government of the Netherlands constituted a bounty, but that the excess of the so-called "rebate" over the amount of the tax did constitute a bounty.

Again in the case of Russian sugars (U. S. v. Downs) (Supreme Court Reporter, Vol. 23, p. 222), the imposition of the countervailing duties was properly sustained by the Supreme Court not because the Russian regulations remitted the excise tax on exported sugars, but because they also allowed the exporter a certificate of exporta-

tion carrying with it a privilege of exemption from taxation which is transferable and has a substantial market value.

It was to meet such cases of indirect bounties as these that a wide wording was used in Section 6, and not in order to allow its application to simple drawbacks or duty exemptions as in use in the United States or United Kingdom.

In the United States, under Section 3329, Revised Statutes, as revised (21 Stat., 145), distillers of spirits can obtain export certificates in the nature of a quittance of internal revenue taxes or other burdens which carry certain rights in case of reimportation. But nowhere would American spirits therefore be held to be bounty-fed.

Exhibit 6.

Annex D.

The Existing Rates of Allowance.

The existing rates of allowance, viz: 3d. per gallon for plain spirits and 5d. per gallon for compounded spirits, were fixed in 1902, as the result of a long period of discussion, extending over several years, between the revenue authorities and the traders concerned, and they are fully justified by reference to the conditions of today.

48 Allowance of 3d. on Plain Spirits.

This allowance is given in respect of the various restrictions imposed by the law upon distillers, of which the following are the most important:

(1) The prohibition against brewing and distilling at the same time;

(2) The prohibition against mixing worts while in the process of fermentation;

(3) The compulsory stoppage of work on Sundays;

(4) The restrictions on the manufacture of yeast.

We are satisfied that at the present time the cost thrown upon the distiller by these restrictions is not less than the 3d. allowed.

Allowance of 5d. on Compounded Spirits.

Rectifiers and compounders, i. e., manufacturers of British compounded spirits (e. g., gin, sloe gin, orange bitters, and British liquers) work under this further statutory disability that their business must be carried on apart from a distillery and the compounds must be manufactured from spirits on which the duty has been paid. This restriction increases the cost of manufacture by at least 2d. per gallon. An allowance of 5d. per gallon is therefore paid on the exportation of British compounded spirits of which 3d. is payable in respect of the restrictions at the distillery, which have enhanced the price of the spirits as purchased, and the remaining 2d.

in respect of the restrictions imposed on the rectifier. In view of the fact stated above, we have no hesitation in certifying that at the present time the allowances paid on export of British spirits are in no sense bounties, and that the existing rates of 3d. and 5d. are no higher than is necessary to attain the object with which they were introduced by Mr. Gladstone in 1860, viz: that they should recoup the exporter in respect of (to quote the Act under which they were originally granted) "the loss and hindrance caused by excise
60 regulations in the distillation and rectification of spirits in the United Kingdom" (23/24 V /c, 129, s. 6).

(Signed) L. N. GUILLEMARD,
Chairman of the Board of Customs and Excise.
F. S. PAREY,
Deputy Chairman of the Board of Customs and Excise.

Signed at the Board of Customs and Excise in the presence of—
(Signed) J. P. BYRNE, *Secretary.*

Custom House, London, March 1, 1921.

Document 6.

Annex E.

Evidence of Mr. Nicholson of J. W. Nicholson and Son of London, a Leading Firm of Distillers. Given in 1905 Before a Departmental Committee.

7210. Do you consider that the allowance which we make of 3d. per proof gallon on the plain spirit covers you?—The 3d. allowed for export is very insufficient. We have no chance in a neutral market, and it is only, generally speaking, where British spirit is asked for that we can get a chance of competing.

7211. In what form does your spirit go abroad?—as a plain silent spirit?—Yes.

7212. Then at the present price of the spirit, 10d. per proof gallon, the allowance of 3d. is based on the assumption that 30 per cent of the cost of production is due the excise restrictions, in other words, without the excise restrictions you could sell that spirit at 7d. which is now sold at 10d.?—Yes. The special methylation spirit is sold at 10d.

7213. Therefore one may assume on the basis of the existing figures roundly, that the cost of production is 9d., and that of that 9d. one-third is due to the excise restrictions?—Yes.

7214. In other words, without the excise restrictions you could produce at 6d. per gallon?—Certainly.

70 7215. You have no doubt about that, have you? You think you could produce at 6d.? I certainly think we could.

The excise restrictions trouble us in so many more ways than are recognized by the Excise. The Excise, in the differential duty, gives us certain money value for certain prohibitions, but there are many more prohibitions which they will not acknowledge; for instance, we can not work by-products as we should like to do, owing to the restrictions. We can not work kindred trades in conjunction. For instance, we might be sugar refiners or starch makers, or other kindred trades. We are cut off entirely from that. We are put into a category by ourselves simply as distillers. These restrictions, therefore, tell very much against us. Also, whenever we apply for an alteration in plant, plans have to be produced and reasons given, why we are going to do it; if the Excise do not like the scheme, we can not carry it out. We have to satisfy them as to its chances of success. It is very hard indeed for a distiller to try experiments to improve his produce or plant. There are many things of that kind. Besides, owing to being under supervision, no secret process whatever can be worked, because the information leaks out and is passed on to other distilleries. In most free trades money is made by enterprising people working their own schemes in their own way, but we are absolutely debarred from doing so. In fact, by the rules and regulations, there is virtually only one way to make spirit—you have got to brew and use certain vessels, and you have got to distil, and use certain stills, and the whole thing has got to be followed out in a certain way. Therefore the values that have been agreed upon as a compromise between us and the Excise by no means represent the whole case.

We, the undersigned, James Buchanan, Chairman of James Buchanan & Co., Ltd., of Glasgow and London; Thomas R. Dewar, Managing Director of John Dewar & Sons, Ltd., of Perth and London; Peter J. Markie, Chairman of Markie & Co., Distillers, 51 Ltd., of Glasgow and London, and George P. Walker, Chairman of John Walker & Sons, Ltd., of Kilmarnock and London, Exporters of Scotch Whisky to the United States of America, do hereby make oath and say:

(*a*) That the drawback of 3*d.* per proof gallon allowed by the British Government on the exportation of British spirits is in no sense a bounty, but an "allowance" long since granted, after full enquiry, and continued to distillers as some compensation for the stringent manufacturing restrictions and expense imposed upon them by compliance with revenue regulations.

(*b*) That these restrictions include: e. g., the condition that mashing and distilling processes must be carried on at separate times, thereby causing one-half of the plant to remain idle, whereas in Continental Distilleries these processes can be carried on simultaneously and continuously, even during Sundays. The result of this restriction is, by comparison, to reduce the production of the British distiller, employing similar plant, by one-half or two-thirds.

(*c*) That the regulations governing the equipment of distilleries, warehouse and housing accommodation for revenue officers are exceedingly onerous in their requirements of capital outlay and that

the drawback in question has been, and is, admittedly given as some recompense therefor.

(Signed) JAS. BUCHANAN.
THOMAS R. DEWAR.
P. J. MACKIE.
GEO. P. WALKER.

Subscribed and sworn by the above-named James Buchanan, Thomas R. Dewar, Peter J. Mackie and George P. Walker at No. 79 Mark Lane, in the City of London (England), this twenty-seventh day of February in the year of our Lord 1911, before me

(Signed) ALFRED DONNISON,
Not. Pub.

A Commissioner to administer oaths in the Supreme Court of Judicature in England.

52 CITY OF LONDON, ENGLAND, *ss:*

On this twenty-seventh day of February, in the year of our Lord, one thousand, nine hundred and eleven, before me, Alfred Donnison, of the City of London, Notary Public, duly admitted and sworn and a Commissioner to administer oaths in the Supreme Court of Judicature in England, personally came and appeared James Buchanan, Thomas R. Dewar, Peter J. Mackie and George P. Walker, to me known, and known to me to be the persons respectively named and described in the foregoing affidavit, who, having been by me each duly sworn, made oath and said that the several matters and things mentioned and contained in the said affidavit were true.

And I further Certify that the signatures "Jas. Buchanan," "Thomas R. Dewar," "P. J. Mackie" and "Geo. P. Walker" thereto respectively subscribed are of the respective proper handwriting of the said James Buchanan, Thomas R. Dewar, Peter J. Mackie and George P. Walker, and were this day subscribed by them in my presence.

In testimony whereof I have hereunto set my hand and affixed my Seal of Office the day and year above written.

ALFRED DONNISON,
Not. Pub.

(*Certificate.*)

I, Alexander John Cameron, of Perth, Scotland, Secretary to John Dewar & Sons, Limited, Distillers there, being duly authorised under the Seal of the Company to make Affirmation on its behalf do solemnly and sincerely affirm and make oath that the allowance made to us by the Treasury of the British Government on Whisky exported to foreign countries and amounting to three pence per Imperial proof gallon as tested by Sykes' hydrometer does not adequately reimburse or cover us for the extra expense and outlay incurred by us in the manufacture of Whisky by reason of the many restrictions and re-

straints put upon us by the British Excise Regulations such as—

53 (*a*) Separation of periods in distillation, thus involving idleness of half our plant which would be obviated did such restrictions not exist.

(*b*) The prohibition of Sunday work.

(*c*) Interest on capital thus sterilised.

(*d*) Various other minor restrictions which all tend to increase the cost of production.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of "The Oaths Act of 1888."

Declared at Perth, this 24th day of February, 1911, before me, Robert Halley, Justice of the Peace for the County of Perth in Scotland.

(Signed) A. J. CAMERON.

Affidavit by James Charles Calder, managing director of James Calder and Company, Limited, Bo'ness Distillery, and partner in Gartloch Distilleries Company, Chryston, Grain Distilleries; and director of Stronachie Distillery, Forgandenny, Scotland, Pure Highland Pot Still Distillery.

I am a practical distiller of whiskies, both malt and grain, and have been brought up to it all my life, having worked through all the processes, and have a thorough knowledge both of the practical and commercial side of the business, and I solemnly declare that I consider the rebate of three pence per proof gallon, allowed to us by the Excise Authorities in this country on the exportation of British Whiskies, is not sufficient to cover the actual loss of producing the whisky on account of the Excise Regulations. These regulations are so many and so varied that it is impossible to enumerate them in detail, but I have repeatedly made application and discussed the matter with the Excise Authorities asking for an increase of this rebate as it was not sufficient, and pointed out the reasons why I considered it too small, but have never been successful in getting

54 it increased, as our Excise Authorities said to me that the revenue was so much needed that there was no chance of getting anything extra, and it is proof positive that this allowance is not a bounty, but an allowance on account of the extra cost, simply and solely that it is allowed, as, otherwise, the Government would never grant us this money as there is no industry to which they pay less consideration.

(Signed) JAS. C. CALDER.

Subscribed and sworn to before me at Edinburgh, Scotland, this 17th day of February, 1911.

FREDERICK PIATT,
Vice and Deputy Consul of the United States of America.

EXHIBIT 7.

No. 101, American Consulate, Edinburgh, Scotland, March 23, 1910.

Subject: Allowance on the Exportation of Whisky.

To the Honorable the Assistant Secretary of State, Washington.

SIR: I have the honor to say that in a report from this office to the Department of State, dated December 19, 1904, on "Blending Whiskies in Scotland" reference was made to the allowance or bounty upon the exportation of British spirits. The terms of this allowance are as follows (2 Edward VII, Ch. 7, Paragraph 5):

"On plain spirits and spirits of wine, on being exported or used in warehouse for fortifying wines, or lime, or lemon juice (payable to the person giving security for the exportation, or the person giving the written request for the use of the spirits, as the case may be) and on spirits of wine on deposit in warehouse (payable to the person in whose name they are warehoused) per proof gallon, 3 pence."

55 Exporters of whisky from bond in this country to the United States receive this allowance of 3 pence per proof gallon.

I respectfully request information as to whether or not, under Section 6 of the United States Tariff Act of 1909, a countervailing duty of 3 pence per proof gallon is levied upon British whisky imported into the United States.

I have the honor to be Sir, your obedient servant,

(Signed) RUFUS FLEMING, *Consul.*

No. 103.

AMERICAN CONSULATE,
EDINBURGH, SCOTLAND, April 28, 1911.

Subject: Allowance on the Exportation of Whisky.

To the Honorable the Assistant Secretary of State, Washington.

SIR: In obedience to the Department's instruction of the 15th instant (File No. 12194/69, Serial No. 68) enclosing a copy of a letter from the Acting Sec'y of the Treasury with reference to the allowance on exportation of British spirits, I have the honor to enclose herewith a copy of the Customs and Inland Revenue Act of 1885 (48 and 49 Vict. Ch. 51) a copy of the Revenue Act of 1889 (52 and 53 Vict., Ch. 42) a copy of the Finance Act of 1895 (58 Vict., Ch. 16) and a copy of the Finance Act of 1902 (2 Edw. VII, Ch. 7). The provisions of each of these acts are permanent unless and until amended. The terms of the original law, granting an allowance on the exportation of whisky, etc., are found in the Customs and Inland

Revenue Act of 1885. The amount of the allowance was increased by the Finance Act of 1902 (2 Edw. VII, Ch. 7) from 2 pence to 3 pence per proof gallon. There has been no change in the law since 1902.

On the withdrawal of whisky from bond for export the Customs Office certifies to the Excise Office of the district the number of proof gallons and the name of the exporter, and upon this certificate
56 the exporter receives 3 pence per proof gallon. British proof spirit ascertained always with Sykes' hydrometer is that which at the temperature of 51° Fahrenheit weighs exactly twelve-thirteenths of an equal measure of distilled water. A British gallon of proof spirit is the quantity which weighs nine and three-thirteenths lbs. avoirdupois.

I have the honor to be, Sir, your obedient servant,

(Signed) RUFUS FLEMING, *Consul.*

Enclosures: 1. Customs and Inland Revenue Act, 1885. 2. Revenue Act, 1889. 3. Finance Act, 1895. 4. Finance Act, 1902.

No. 104.

AMERICAN CONSULATE,
EDINBURGH, SCOTLAND, June 7, 1910.

Subject: Allowance on the Exportation of Whisky.

To the Honorable The Secretary of State, Washington.

SIR: In obedience to the Department's instructions of the 25th ultimo (No. 69), enclosing a copy of a letter from the Treasury Department relative to the allowance on the exportation of British spirits, I have the honor to report that a distiller, blender or other owner of whisky in a British bonded warehouse pays no tax or charge of any kind to the Government. When whisky is taken from bond, in casks, hogsheads or bottles, and entered for home consumption the excise tax paid is 14/9 ($3.58) per British proof gallon. When whisky is taken from bond for export, in casks, hogsheads or bottles, the Government pays the exporter 3 pence per proof gallon. On this exported whisky the Government has received nothing from the manufacturer, blender, or exporter.

The explanation offered by Customs and Excise officers of the allowance on the exportation of whisky is that it is intended to compensate the manufacturer, blender, or exporter for the trouble and expense to him caused by the Excise restrictions, so that he
57 will be able to place his goods in foreign markets unburdened by any extra cost of production. Why a deduction of a like amount is not allowed on whisky for domestic consumption two reasons are offered by Customs and Excise Officers: 1. The manufacturers, or blenders are all treated alike and are therefore on equal terms in the home market. 2. The manufacturers and blenders are

compensated for the extra cost on account of Excise restrictions by a Protective duty or surtax on imported spirits. The customs duty on whisky is 5 pence more per proof gallon than the Excise tax at 14/9 ($3.58) per proof gallon as at present, the customs duty is 15/2 $3.69) per proof gallon on foreign whisky.

But considering that the Government derives no revenue whatever from domestic whisky which is exported, and inasmuch as whisky blended and bottled in bond and entered for home consumption is on precisely the same level of costs to the manufacturer or blender as whisky exported, the allowance of 3 pence per proof gallon on exportation appears to be purely a grant or bounty.

I have the honor to be, Sir, your obedient servant.

(Signed) RUFUS FLEMING, *Consul.*

AMERICAN CONSULATE,
EDINBURGH, SCOTLAND, August 5, 1913.

Subject: The Export Bounties on British Spirits.

To the Honorable the Secretary of State, Washington.

SIR: I have the honor to report that in a despatch from this office, dated March 23, 1910 (N. 101) attention was called to the allowance or bounty paid by the British Government upon exports of British spirits: that with a despatch from this office dated April 28, 1910 (No. 103) copies of the Acts of Parliament granting an allowance on the exportation of spirits were enclosed that in a despatch dated June 7, 1910 (No. 104) the character of this allowance was precisely defined; that on January 21, 1911, the Treasury
58 Department imposed countervailing duties amounting to 3 pence per British proof gallon on British plain spirits and to 5 pence per proof gallon on British compounded spirits imported into the United States, to take effect 30 days from the date of the order; that the operation of the order was deferred; and that on May 2 the Treasury decision of January 21 was rescinded, the Treasury Department having reached the conclusion that the allowance paid by Great Britain on spirits when exported was not a bounty or grant within the meaning of Section 6 of the Tariff Act of August 5, 1909; that this office has no information in regard to the grounds upon which the Treasury decision of January 21, 1911, was reversed, but I deem it my duty to make further representations concerning this allowance on exported spirits.

Long and careful investigation of the processes in the manufacture, blending and bottling of British Spirits has confirmed the opinion that the allowance is simply a grant to exporters. Spirits to be exported and spirits to be entered for domestic consumption are taken from the same vat. The contention of exporters of whiskey that the allowance of three pence per proof gallon is of the nature of a "drawback" for extra expense imposed by the excise restrictions upon their business, has no validity. The additional labor cost or other cost to blenders and bottlers involved in the excise restrictions is trifling, inasmuch as fully four-fifth- of the spirits to be entered

for home consumption are blended and bottled in bond by the same employees who blend and bottle spirits to be exported and under exactly the same conditions. Any increased cost on account of excise restrictions is more than counterbalanced by the saving effected by bottling, etc., in bond. In the processes of blending and bottling and of casing and barreling spirits, there is a certain amount of waste, especially due to the breaking of bottles or other containers.

59 In bond, the loss by this waste of spirits is comparatively small, as no tax has been paid on the spirits. On every gallon wasted in bond by the bursting of bottles, etc.,—the loss is from 2/6 (61 cents) to 5/ ($1.21), whereas on every gallon of tax-paid spirits wasted the loss is from 17/3 ($4.19) to 19/9 ($4.80). Obviously, it is economical to blend and bottle spirits in bond for domestic consumption as well as for export; and it is obvious also that the allowance on the exportation of spirits is purely a grant or bounty. This allowance is so regarded here by all users of neutral spirits (Manufacturing chemists and others), by dealers in wines, and by dealers in whisky who are not exporters. The effect of this export bounty upon the Scotch whisky trade has long been observed in the great efforts of distillers and blenders to increase their sales in foreign and British colonial markets. The allowance on whisky exported, three pence per proof gallon, is a fair wholesale profit and has enabled distillers and blenders largely to extend their trade abroad.

I have the honour to be, Sir, your obedient servant.

(Signed) RUFUS FLEMING,
American Consul.

EXHIBIT 8.

No. 85.

WASHINGTON, D. C., March 19, 1914.

Secretary of State.

SIR: With further reference to your note No. 272 of the 7th instant I have the honor to inform you that I am in receipt of a telegram from my Government stating that there has been no change whatever since 1911 either in the amount or nature of the allowance paid H. M. G. on the export of British spirits.

60 EXHIBIT 9.

BRITISH EMBASSY, WASHINGTON, May 1st, 1914

SIR: With reference to your note No. 265 of March 2nd and to subsequent correspondence on the subject of the intention of the Treasury Department to impose countervailing duties on imported British spirits on the ground that the allowance granted on the exportation thereof constitutes a bounty within the meaning of Para-

graph E, Section 4 of the Tariff Act, I have the honor to inform you that His Majesty's Government have carefully examined the arguments contained in the despatch from the United States Consul at Edinburgh upon which the Treasury's Department's decision is founded.

After careful consideration of this despatch His Majesty's Government feel convinced that the United States Consul is under a misapprehension as to the facts of the case. He maintained that the allowance is of the nature of grant or bounty, and not merely a drawback, because British Spirits for export and for home consumption are taken from the same vat and are blended and bottled in bond; and that therefore the trifling extra cost imposed by the Excise regulations is more than counterbalanced by the saving of the amount of the tax, on such spirits as are wasted by the breaking of bottles in the process of bottling and blending in bond. This argument rests upon the erroneous assumption that the exporter received the allowance as compensation for extra expense caused to him by the excise regulations governing the blending and bottling operations in bonded warehouses. But these regulations have no bearing upon the question at issue. The allowance of 3d in the case of plain spirits is granted solely on account of statutory restrictions on the actual brewing and distilling which increase the cost of production to the distiller: the allowance of 5d in the case of compounded spirits is made up of 3d payable in respect of the above mentioned restrictions at the distillery and 2d extra on account
61 of the further statutory disability that the work of rectifying and compound must be carried on apart from a distillery and the compounds must be manufactured from spirits which have already paid duty. The regulations under which the subsequent operations of vatting blending and bottling are carried in bonded warehouses are not, and never have been considered in connection with the export allowance.

I have the honor to transmit herewith for the further information of the United States officials, a copy of a Memorandum drawn up by His Majesty's Commissioners of Customs and Excises in 1911, defining the precise character of these allowances.

With reference to the statement contained in the Consul's despatch to the effect that "British users of neutral spirits (manufacturing chemists and others) dealers in wines and dealers in whisky, who are not exporters regard the allowance as a bounty, His Majesty's Government doubt whether this view is widely prevalent. They point out, however, that these classes of traders have no interest in the matter and probably few have any knowledge of the nature and reasons of the allowance.

Finally I may observe that the allegation that this allowance constitutes "a grant to exporters" would seem to be sufficiently disapproved by the one fact that an allowance is also granted on spirits used in the production of industrial spirits for domestic consumption under the British Revenue Act of August 4, 1906, Part 1, Section 1, a fact quoted in the United States Treasury Memorandum of April

17, 1911, in support of their revocation of the Order Imposing countervailing duties in the following terms:

"United States Treasury Memorandum of April 17, 1911."

"Fifth. The fact that the British Revenue Act of August 4, 1906, Part 1, Section 1, provides that:

"Where any spirits are used by an authorized methylator
62 for making industrial methylated spirits, or are received by any person for use in any art or manufacture under Section 8 of the Finance Act, 1902, the like allowance shall be paid to the authorized methylator or to the person by whom the spirits are received as the case may be, in respect to those spirits as is payable on the exportation of Plain British Spirits."

"The effect of this Act is clearly to indicate that the allowance is a bona fide allowance as stated in the Act of 1860, and is not in any sense an export bounty."

I have the honor on behalf of His Majesty's Government to submit the foregoing considerations to the judgment of the United State Government in reply to the invitation conveyed in your note of March 2d, and in the confidence that, upon examination, they will be found ample to justify the contention that the Consul's report is based upon a misconception of the facts of the case.

I have the honor to be, with highest consideration, sir, your most obedient, humble servant.

(Signed) CECIL SPRING-RICE.

The Honorable W. J. Bryan, Secretary of State, etc., etc., etc.:

United States Treasury Memorandum of April 17, 1911, Referred to in the Foregoing Despatches.

Memorandum for the Customs Division.

Relative to the Allowance Paid on the Exportation of British Spirits.

April 17, 1911.

In determining the question whether or not a countervailing duty shall be assessed upon spirits manufactured in Great Britain and imported from there to this country, the principal facts to be taken into consideration are:

63 First, the fact that Great Britain has a fiscal policy not only of free trade, but also of a lack of artificial stimulus to trade such as is produced by bounties.

Second, that the allowance of 3d. a gallon authorized by Section 3 of the Act of 48 and 49 Victoria, chapter 51, is an allowance made as expressly stated in the preceding similar act (Section 4 of the Act of 23 and 24 Victoria, page 29) "In consideration of the loss and hindrance caused by the excise regulations in the distillation and rectification of spirits in the United Kingdom."

Third, that from evidence produced in the form of sworn statements of distillers and rectifiers and other evidence produced by the British Government, it appears that the allowance is not in excess of the actual loss and hindrance caused by the excise regulations.

Fourth, the fact that there is a greater amount of duty assessed per gallon upon imported spirits into Great Britain than there is assessed as excise upon domestic manufactured spirits in Great Britain, thus clearly indicating that the domestic distiller or rectifier is protected against competition at home; and not merely protected by the allowance in question against competition in his export trade.

Fifth. The fact that the British Revenue Act of August 6, 1906, Part 1, Section 1, provides that:

"Where any spirits are used by an authorized methylator for making industrial methylated spirits, or are received by any person for use in any art or manufacture under Section 8 of Finance Act of 1902, a like allowance shall be paid to the authorized methylator, or person by whom the spirits are received as the case may be, in respect to those spirits as is payable on exportation of plain British Spirits."

The effect of this act is clearly to indicate that the allowance is a bona fide allowance as stated in the act of 1860 and is not in any sense an export bounty.

64 Sixth. The fact that this allowance has been made since 1860 without having been acted upon by this Department at any time prior to the present investigation.

In view of these considerations the Department has accepted the view that the allowance in question is not a bounty or grant within the meaning of Section 6 of the Tariff Act of August 5, 1909, and consequently that no countervailing duty shall be assessed upon importations of British Spirits.

T. D. 31229 of January 21, 1911, will be revoked accordingly and a new T. D. will be published in the following form:

To Collectors and other Officers of Customs and others concerned:

Upon a further consideration of the laws of the United Kingdom of Great Britain and Ireland relating to the allowance granted upon exported British spirits, and upon consideration of additional laws and facts in relation thereto submitted by the Officers of the said Government, the Department has reached the conclusion that the said allowance is not a bounty or grant within the meaning of Section 6 of the Tariff Act of August 5, 1909. Consequently, no counter-vailing duty will be assessed upon British spirits imported into the United States. T. D. 31229 is hereby revoked.

No. 62 Commercial. 17869. The Secretary of State for Foreign Affiairs. April 21, 1914.

To Sir C. Spring-Rice.

5 x 5A.

EXHIBIT 10.

Custom House, London, E. C., April 18, 1914.

SIR: I am desired by the Commissioners of Customs and Excise to transmit the enclosed memorandum relative to the pro-
65 posed imposition of countervailing duties on British Spirits imported into the United States, and to suggest that the memorandum might be forwarded to the Foreign office for communication, as suggested by Sir C. Spring-Rice, to the United States Government.

I am, &c.,
(Signed) J. P. BRYNE.

The Secretary to the Treasury, &c., &c., &c.

Allowance Paid on the Exportation of British Spirits.

The Commissioners of Customs and Excise have examined the despatch from the United States Consul at Edinburgh, dated August 5, 1913, and desire to offer the following observations thereon:

The view of the Consul that there is no justification for the grant of allowance on the exportation of British spirits and that payment of such allowance is "purely a grant or bounty," appears to be based upon a complete misconception of the facts of the case. The Consul's argument rests upon the erroneous assumption that the exporter received the allowance under the guise of compensation for the costs to him of the revenue regulations governing blending and bottling operations on spirits in bonded warehouses. These regulations have, however, no bearing upon the question at issue. The allowances, as explained in detail in the memorandum from this Department of March 1, 1911, are granted solely on account of the statutory restrictions on the actual manufacture of the spirits and the effect of these restrictions in increasing the cost of production to the distiller or rectifier, as the case may be. The regulations under which the subsequent operations of vatting, blending and bottling are carried out in bonded warehouses are not and never have been considered in connection with the export allowances.

The Commissioners find nothing in the despatch of the Consul to lead them to modify in any respect their memorandum
66 of the 1st March, 1911. Nor do they think they can usefully add anything to that Memorandum except to point out that the allegation that the allowance is "simply a grant to exporters" is sufficiently disproved by the fact that an allowance is also granted to spirit used in the production of industrial spirit to be used in the United Kingdom. This fact was quoted in 1911 by the Treasury of the United States in support of the revocation of the order imposing countervailing duties in the following terms:

United States Treasury Memorandum of April 17, 1911.

"Fifth. The fact that the British Revenue Act of August 4, 1906, Part 1, Section 1, provides that:

'Where any spirits are used by an authorized methylator for making industrial methylated spirits, or are received by any person for use in any art or manufacture under Section 8 of the Finance Act, 1902, the like allowance shall be paid to the authorized methylator, or to the person by whom the spirits as is payable on the exportation of plain British spirits.'

The effect of this Act is clearly to indicate that the allowance is a bona fide allowance as stated in that Act of 1860 and is not in any sense an export bounty."

With reference to the statement that "users of neutral spirits (manufacturing chemists and others)," "dealers in wines" and "dealers in whiskey who are not exporters" in the United Kingdom regard the allowances as a bounty, the Commissioners can only say that they have no knowledge to what extent this view is held, though they doubt whether it is widely prevalent. It may be pointed out, that these classes of traders have no interest in the matter, and that probably, few are even aware that there is such an allowance and that still fewer are acquainted with the grounds on which *is it* granted.

Custom House, 18th April, 1914.

67 EXHIBIT 11.

The following is a statement made by Mr. Peter Dawson, one of the largest Scotch distillers. It is submitted as being an accurate statement of the conditions surrounding the foreign producer and setting forth the reason for the allowance of three-pence per gallon on exported British spirits.

The distillers and producers of spirits in Great Britain are required by the Internal Revenue Law to close down their business on Saturday night at twelve o'clock, thus compelling all fires to go cold and requiring the reheating of all mask, kettles, stills, etc., on Monday morning of every week.

In addition to this, excise men supervise every step that is taken and keep all machines, still, vats and warehouses under lock and key so that no step in the process of distillation can be taken except under the direct supervision of the Government officials.

Separate and distinct records must be kept in particular books and in a particular manner regarding every mash and all the liquor produced therefrom subject to the inspection of the Government officials at all times, and report must be made concerning the business of distilling required from time to time to the Government.

No spirits are distilled in Great Britain except in bond and under the above method of supervision, which is exceedingly onerous and expensive, and especially so on account of the requirement that all the distillation of liquor must cease on Saturday night and remain for 24 hours in abeyance.

The Internal Revenue Law of Great Britain imposes a tax upon

all spirits produced for potable purposes, but since all distillers produce spirits for both potable purposes and for methylating for commercial use, as well as for export, it becomes necessary that the tax should be estimated upon the entire amount of production although paid only upon goods manufactured for domestic
68 potable use. It thus appears that the expense incident to full obedience with the Internal Revenue Law applied to all liquor distilled whether the same subsequently is sold for methylated commercial purpose or is exported, and as this expense is very considerable the Government has, for more than fifty years, made an allowance per gallon to the distiller upon so much of his product as is turned into methylated commercial channels or being potable is exported from the country.

This allowance was originally two-pence per gallon, but is now, and has been for many years past, three-pence per gallon, and is allowed against all liquor produced for methylated commercial purposes and against all liquor exported from the country.

It is also a fact that all importations of potable liquor pay not only the Internal Revenue Tax, but an addition of four-pence per gallon before the same may be released for the British market.

The expense referred to above incident upon the distillation and production of British spirits is created in the distillation of the same and in the subsequent blending and bottling of the same, the larger part of the expense being created by the requirement of the law specifically relating to the distillation and production, and the smaller part of the expense following on under the requirements of the law covering blending and bottling.

It will thus appear that the purpose of the Government was to raise a revenue as against the distillation, production, blending and bottling of potable spirits for domestic use only, and to that end it has authorized a separate account to be kept of all distilled spirits devoted to methylated commercial use and all distilled spirits exported from the country. Upon such it returns to the distiller, producer, blender or bottler an allowance of three-pence as being approximately the costs per gallon imposed against these spirits by compliance with the Internal Revenue regulations.

69 It has been represented to the Government with full force and effect by the British distillers, producers, blenders and bottlers, that the allowance should be made four-pence per gallon to make good to them the expense incident to their business, and the Government's attention has been called to the fact that the additional import tax of four-pence on the gallon imposed upon foreign spirits in order that the same may compete with British spirits upon an even basis is indication that the above expense is four-pence rather than three-pence, but thus far the British Government has declined to increase the allowance.

It is to be remembered that the requirement of the law forbidding the conduct of business from midnight on Saturday until one o'clock Monday morning applies solely to the distillation of British spirits, while all other manufacturing businesses are permitted to

continue steadily from month-end to month-end, or from year's end to year's-end, with no legal restriction whatsoever.

It must further be noted during the period of time from Monday morning at one o'clock to Saturday night at twelve o'clock the business of distilling is conducted under the immediate eye of the excise officials, but that the hours are limited daily from nine o'clock to four o'clock, and if it become necessary to pay an extra fee for two hours additional attendance on the part of the Government officer.

100 West George St.,
Glasgow, 21st April, 1914.

The Right Honourable Sir Edward Grey, M. P., His Majesty's Secretary of State for Foreign Affairs.

Sir, On 23 February, 1911, we took the liberty of addressing you with reference to a proposal then made by the United States Government to place a countervailing duty upon all British spirits entering the States on the plea that the export allowance which had been granted by the British Government ever since 1860 on spirits shipped beyond the United Kingdom represented a bounty given to the British distiller.

Through the influence which you brought to bear upon the U. S. Government at that time, the proposal was fortunately abandoned, and a further injustice to the British Distiller was thereby avoided.

We now learn that the subject has again been revived by the U. S. Government, through a report which they have received from Mr. Rufus Fleming, the American Consul at Edinburgh, and that there is every possibility, unless your influence again prevails, of the U. S. Government adopting their former proposal.

We have had the opportunity of seeing a copy of Consul Fleming's report (sent home from the States) and we unhesitatingly state that the arguments employed by him, and the conclusions arrived at are based on inaccurate knowledge of the true facts. No one has ever suggested that the Grades and bottles of British spirits for export is hampered with any restrictions which do not equally apply to spirits consumed in this country. What we do say is that the whole operations of distillers in this country, whether the spirits are destined for home or export, are carried on under restrictions which are deemed necessary to protect the large revenue derived from their product. In the case of spirits consumed in this country the extra cost entailed may be described as an addition to the duty which is collected in cash, and as between distillers at home no one received a preference over the other.

When, however, the British distiller is put into competition with the Foreign distiller, these restrictions then become a real handicap and it was to meet this condition that the duties on foreign spirits entering this country was imposed, while, carrying the principle to its logical conclusion an allowance as given on British spirits exported.

72 In the words of Sir H. Primrose, ex Ex-Chairman of the Inland Revenue, "Both the allowance and the surtax which date from 1880 aim at the same purpose which is not to put the British producer of spirits in a position of advantage as compared with his foreign or colonial competitor, but to save him from being placed in a position of disadvantage."

The allowance can in no sense be regarded as in the nature of a bounty and we have every confidence that you will so represent the position to the United States as will lead them to finally withdraw their present proposal.

We have the honor to remain, sir, your most obedient servants.

For the Scottish Whisky Exporters Assn., Chairman.

Return of the Board.

Board of United States General Appraisers.

No. 5602.

Abstr. D. Shaw & Co. et al., Appellants,
v.
The United States, Appellee.

The petitioner above named, having applied to the United States Court of Customs Appeals for a review of the questions of law and fact involved in a decision of the Board of United States General Appraisers in the above case, and the said Court having ordered the Board to transmit to said Court the record, evidence, exhibits, and samples, together with a certified statement of the facts involved in the case and its decision thereon:

Now, therefore, pursuant to said order, the Board of United States General Appraisers does hereby transmit to said Court the record, evidence, exhibits, and samples in said case, together with a certified statement of the facts involved in the case, and also its decision thereon.

This return specifically comprises the following:

1. Protest 772,573, 66,980 with the report of the collector of customs thereon;

72 2. The other protests enumerated in the petition with the reports relative thereto, endorsed herewith in a separate envelope;

3. The record of submission;

4. The stipulation of counsel, which is included in the return in Suit 5598, Nicholas vs. United States;

5. Exhibits 1 to 11, referred to in the stipulation, returned with the record in suit 5598;

6. A copy of the Board's decision in question, G. A. 7758 (T. D. 30567).

Witness the Honorable Jerry B. Sullivan, President of the Board, this sixth day of October, A. D. 1915.

[SEAL.] D. P. DUTCHER,
Chief Clerk, G. V. O., Countervailing Duty on Spirits.

Protest 772,173/66,890.

Alex. D. Shaw & Co.,
76 Broad Street, New York.

NEW YORK, Oct. 9th, 1914.

Hon. Collector of Customs, New York City, N. Y.

DEAR SIR: We, Knauth, Nachod & Kühne, of 15 William Street, New York City, as provided in the Tariff Act of the United States of October 3rd, 1914, entitled "An Act to reduce Tariff Duties and to provide revenue for the Government and for other purposes," Section III, paragraph N, and Section IV, paragraph E, respectfully protest against the additional duty levied on the herein-below described goods, under Treasury Decision 34,466 of May 25th, 1914.

The ground of this protest is that said additional duty was unlawfully levied for the reason that no "bounty or grant upon the exportation of" said goods has been "paid or bestowed, directly or indirectly" within the intent and meaning of said paragraph E of Section IV of said Act.

Entry No. 23282 [232827? J. H. S.]. Vessel, "St. Paul." Entered 8/3/14. Bond No. —. Liquidated 9/30/14. Marks and Nos., I. C. Bishop, Inc.

73 And we respectfully demand that said additional duty be refunded to us as improperly imposed.

Fee of $1.—enclosed.

Respectfully yours,

KNAUTH, NACHOD & KUHNE.
R. BENNIE, *Attorney.*

Endorsed: Custom House, New York. Received Oct. 9, 1914.

To the Hon. Board of U. S. General Appraisers:

SIR: I hereby give notice that I represent Knauth, Nachod & Kuhne in the matter of their protest number 772,173, and respectfully request that all notices in connection therewith be sent to me.

Respectfully,

W. P. PREBLE.

150 Nassau St., New York City.

Whiskey C. D. Apel.

Endorsed: U. S. Gen. Appr's. Received Apr. 30, 1915.

Report of the Collector.

Jan. 14, 1915.

Respectfully referred to the Board of U. S. General Appraisers for decision.

The merchandise consists of British spirits imported from the United Kingdom of Great Britain and Ireland. Following the instructions contained in T. D. 34466, and 34752, that an export bounty is allowed on plain British spirits, of 3 pence per British proof gallon and 5 pence per gallon on compound spirits, a countervailing duty, equal to the bounty paid, was assessed under paragraph E of section IV, Act of 1913, in addition to the regular rate of duty provided for in schedule H of said act.

The protest was lodged and fee paid within statutory time.

DUDLEY FIELD MALONE, *Collector.*

74 775,118, etc.

May 17, 1915. Submitted on stipulation in 772,188, etc.

For decision of Board see page 20, supra.

75 In the United States Court of Customs Appeals.

No. 1594.

G. S. NICHOLAS & COMPANY et al.
v.
THE UNITED STATES.

Certificate of the Attorney General.

In pursuance of the Act entitled "An Act to amend section 195 of the Act entitled 'An Act to codify, revive and amend the laws relating to the judiciary, approved March 3, 1911,'" approved August 22, 1914, I, T. W. Gregory, Attorney General of the United States, do certify that the case now pending and undecided in the Court of Customs Appeals, entitled "No. 1594, G. S. Nicholas & Company et al. v. The United States," is of such importance as to render expedient its review by the Supreme Court.

Given under my hand this 22nd day of January, 1916.

T. W. GREGORY,
Attorney General.

Filed U. S. Court of Customs Appeals January 26, 1916. Arthur B. Shelton, Clerk.

76 In the United States Court of Customs Appeals.

No. 1602.

ALEX. D. SHAW & COMPANY and KNAUTH, NACHOD & KUHNE.
v.
THE UNITED STATES.

Certificate of the Attorney General.

In pursuance of the Act entitled "An Act to amend section 195 of the Act entitled 'An Act to codify, revive and amend the laws relating to the judiciary, approved March 3, 1911,'" approved August 22, 1914, I, T. W. Gregory, Attorney General of the United States, do certify that the case now pending and undecided in the Court of Customs Appeals, entitled "No. 1602, Alex. D. Shaw & Company and Knauth, Nachod & Kuhne, vs. The United States," is of such importance as to render expedient its review by the Supreme Court.

Given under my hand this 22nd day of January, 1916.

T. W. GREGORY,
Attorney General.

Filed United States Court of Customs Appeals, January 26, 1916. Arthur B. Shelton, Clerk.

77 United States Court of Customs Appeals.

At a Session of said Court Continued and Held at the City of Washington, Pursuant to Adjournment, on This 9th Day of February, A. D. 1916.

Present: The Honorable Robert M. Montgomery, Presiding Judge, and the Honorables James F. Smith, Orion M. Barber, Marion De Vries and George E. Martin, Associate Judges.

The court was opened for business in due form.

* * * * * * *

No. 1594.

G. S. NICHOLAS & Co., E. LA MONTAGNE'S SONS, F. L. ROBERTS & Co., S. S. PIERCE Co., Appellants,
v.
THE UNITED STATES, Appellee.

No. 1602.

ALEX. D. SHAW & Co., KNAUTH, NACHOD & KUHNE, Appellants,
v.
THE UNITED STATES, Appellee.

Said appeals came on to be heard before the court and after hearing the arguments of counsel the cases were taken under advisement by the court.

* * * * * * *

(Signed) ROBERT M. MONTGOMERY,
Presiding Judge.

78 United States Court of Customs Appeals.

G. S. NICHOLAS & Co. et al.
v.
THE UNITED STATES.

and

ALEX. D. SHAW & Co. et al.
v.
THE UNITED STATES.

February Term, 1916, Calendar Nos. 9 and 10, Suit Nos. 1594 and 1602.

Before Montgomery, Smith, Barber, De Vries, and Martin, Judges.

DE VRIES, *Judge,* delivered the opinion of the Court.

This appeal presents for determination the question of the legality of a countervailing duty levied upon spirits imported into the United States from the United Kingdom of Great Britain and Ireland. The countervailing duty was assessed in addition to the regular duties under the provisions of paragraph E of section IV of the tariff act of 1913 (38 Stat. L., 114), which reads:

E. That whenever any country, dependency, colony, province or other political subdivision of government shall pay or bestow, directly or indirectly, any bounty or grant upon the exportation of any article or merchandise from such country, dependency, colony,

province or other political subdivision of government, and
79 such article or merchandise is dutiable under the provisions of this Act, then upon the importation of any such article or merchandise into the United States, whether the same shall be imported directly from the country of production or otherwise, and whether such article or merchandise is imported in the same condition as when exported from the country of production or has been changed in condition by manufacture or otherwise, there shall be levied and paid, in all such cases, in addition to the duties otherwise imposed by this Act, an additional duty equal to the net amount of such bounty or grant, however, the same be paid or bestowed. The net amount of all such bounties or grants shall be from time to time ascertained, determined and declared by the Secretary of the Treasury, who shall make all needful regulations for the identification of such articles and merchandise, and for the assessment and collection of such additional duties.

On May 25, 1914 (T. D. 34466), the Secretary of the Treasury ascertained, determined and declared, with due pertinent regulations, that the United Kingdom of Great Britain and Ireland paid or bestowed on plain British spirits 3 pence and on British compounded spirits 5 pence per gallon, computed at hydrometer proof, and directed countervailing duties conformably levied. This importation was subsequently made at the port of New York and duties accordingly assessed by the collector of customs at that port. The importers duly protested.

The protests were overruled by the Board of General Appraisers, whereupon the importers appealed to this court praying a reversal of that judgment.

The laws of Great Britain, the foundation of the action of the collector, originated with the act of Parliament granting excise duties on British spirits and on spirits imported from the Channel Islands of August 28, 1860 (23 and 24 Vict. ch. 129).

Section 1 of that act levied duties upon every gallon of
80 spirits of the strength of hydrometer proof which on and after certain dates therein mentioned were or should be distilled within the United Kingdom, or which having been distilled therein were on said dates in the stock or possession of any distiller, or in any duty-free warehouse, or in removing to such warehouse, and which should be after the several named days taken out for consumption within the United Kingdom.

Section IV of the act provided:

IV. In consideration of the Loss and Hindrance caused by Excise Regulations in the Distillation and Rectification of Spirits in the United Kingdom, there shall be paid to any Distiller *or Proprietor* of such Spirits *on the exportation* thereof from a Duty-free Warehouse, or *on depositing the same in* a Customs Warehouse, on or after the Fifth Day of March One thousand eight hundred and sixty, the Allowance of Twopence per Gallon computed at Hydrometer Proof, and to any licensed Rectifier who on or after the said last-mentioned Day has or shall have *deposited* in a Customs Warehouse Spirits distilled and rectified in the United Kingdom the following

Allowances; (that is to say), on rectified Spirits of the Nature of British Compounds not exceeding Eleven Degrees over Proof as ascertained by Sykes' Hydrometer an Allowance of Threepence per gallon, and on Spirits of the Nature of Spirits of Wine an Allowance of Twopence per gallon, such Gallons being computed respectively at Hydrometer Proof.

In 1865 these provisions were amended by section 12 of the act of Parliament (28 and 29 Vict. ch. 98), as follows:

Sect. 12. The allowance of 3d per gallon granted by Section 4 of the Act passed in the 23rd and 24th years of Her Majesty's reign, Chapter 129 of any licensed rectifier in respect of rectified spirits of the nature of British Compounds not exceeding 11 degrees over proof, as ascertained by Sykes' Hydrometer, shall be payable to any
81 licensed rectifier or compounder in respect of any compound spirits *deposited* under the provisions of this Act in any warehouse of customs *or* excise, and *exported to* foreign parts, or used in a customs warehouse for rectifying wines or for any other purpose to which foreign or Colonial spirits may be applied under the laws or regulations of the customs; but such allowance shall not be paid until the certificate from the proper officer of customs shall be produced to the officer of excise appointed to pay the said allowance, that such spirits have been *actually exported* or *used* as aforesaid.

In 1880 Parliament (43 and 44 Vict., ch. 24), amended all previous acts relating to the manufacture, sale, exportation and use and dutiability of spirits in Great Britain by an act entitled "The Spirits Act, 1880." This act provided also for various warehouses. Pertinent provisions thereof are as follows:

"Spirits" means spirits of any description, and includes all liquors mixed with spirits, and all mixtures, compounds, or preparations, made with spirits:

* * * * * * *

"British spirits" means spirits liable to a duty of Excise.

* * * * * * *

"Plain spirits" means any British spirits (except low wines and feints), which have not had any flavour communicated thereto or ingredient or material mixed therewith.

* * * * * * *

"Spirits of Wine" means rectified spirits of the strength of not less than forty-three degrees above proof.

* * * * * * *

"British compounds" means spirits redistilled or which have had any flavour communicated thereto, or ingredient or material mixed therewith:

* * * * * * *

82 "Methylate" means to mix spirits with some substance in such manner as to render the mixture unfit for use as a beverage, and "methylated spirits" means spirits so mixed to the satisfaction of the Commissioners:

* * * * * * *

"Warehouse" means any warehouse approved or provided for the deposit of spirits.

"Distiller's warehouse" means an approved warehouse on the premises of a distiller.

"Excise warehouse" means a warehouse approved or provided by the Commissioners as a general warehouse for the deposit of spirits.

"Customs warehouse" means a warehouse approved or provided by the Commissioners of Customs for the deposit of spirits:

* * * * * * *

13. (1) Every distiller must, to the satisfaction of the Commissioners, provide a spirit store and cause it to be properly secured.

(2) The spirit store must be kept locked by the officer in charge of the distillery at all times except when he is in attendance.

* * * * * * *

45. Subject to the pre-cribed regulations and the prescribed security spirits may be removed from a distiller's spirit store *for exportation* or for ship's stores without payment of duty.

* * * * * * *

49. (1) A distiller may provide a warehouse on his premises for warehousing spirits distilled on the same premises without payment of duty.

(2) Every such warehouse must be approved by the Commissioners and entered by the distiller.

50. (1) The Commissioners may approve Excise warehouses for warehousing spirits *without payment of duty.* Such warehouses shall be for the general accommodation of persons desiring to warehouse spirits.

* * * * * * *

83 54. The Commissioners may, if they think fit, themselves provide Excise warehouses, and may charge for spirits warehoused therein, warehouse rent at the prescribed rate, not exceeding one penny per week for forty gallons. This rate must be paid by the *proprietor* of the spirits to the collector, and shall be a lien on all spirits warehoused in the same warehouse belonging to such proprietor.

* * * * * * *

57. Where a distiller has given the prescribed security under which *he may remove spirits from one warehouse to another,* he may, subject to the provisions of this Act and to the prescribed regulations, remove any spirits directly from his store to an Excise or Customs warehouse, and all spirits so removed shall be deemed to have been first warehoused in the distiller's warehouse and removed therefrom under the provisions of this Act.

* * * * * * *

62. Spirits in a distiller's warehouse may, on the prescribed security being given by the distiller, *be transferred to a purchaser,* but no further transfer may be made of them remaining in the same warehouse.

63. British spirits warehoused in an Excise warehouse in the *name of a distiller* or *dealer* may be transferred into the *name of a purchaser* on his producing to the officer in charge of the warehouse a written order for the delivery thereof, signed by the proprietor of the spirits, and countersigned by the proprietor or occupier of the warehouse or his servant acting for him at the warehouse. Spirits so transferred shall be discharged from all claim in respect of duties, penalties, or forfeitures to which the transferor is liable, but *may not be delivered out of the warehouse for home consumption until payment of the duties* chargeable thereon.

* * * * * * *

72. Subject to the provisions of this Act, spirits warehoused may, in accordance with the prescribed regulations, and on the
84 prescribed security being given, and at the risk of *the proprietor thereof*, be removed to any other warehouse except a distiller's warehouse.

* * * * * * *

75. (1) Spirits may be delivered from *a warehouse* for home consumption after the full duty chargeable thereon has been paid.

* * * * * * *

79. Where British spirits are delivered from *a Customs warehouse for home consumption*, and in all cases where duty is payable on such spirits in such warehouse, the duty payable shall be collected according to the laws and regulations for like spirits in an Excise warehouse by the officers of Customs under the direction of the Commissioners of Customs and paid into the Bank of England to the account of the Receiver General of Inland Revenue and dealt with as other duties of Excise.

80. Where foreign spirits are delivered *from an Excise warehouse for home consumption* the duty payable thereon shall be collected by an officer under the direction of the Commissioners *according to the laws and regulations for like spirits in a Customs warehouse*, and paid into the Bank of England to the account of the Commissioners of Customs, and dealt with as other duties of Customs.

81. (1) *The proprietor of spirits* in a distiller's or Excise warehouse may, on giving notice and the prescribed bond, remove the spirits *for exportation without payment of duty.*

82. Spirits warehoused, may, on the prescribed bond being given, subject to the prescribed regulations and subject to the conditions, regulations, and restrictions required by any Act in force for the time being be delivered out without payment of duty *for ship's stores.*

83. Spirits warehoused may, on the prescribed bond being given, subject to the prescribed regulations, be delivered out, without payment of duty, *for methylation.*

* * * * * * *

95. (13) Spirits warehoused for exportation or ship's stores
85 under this section must not be delivered out otherwise than directly from the warehouse to the ship in which they are to be exported or used as stores.

* * * * * * *

117. (1) Methylated spirits shall, subject to the provisions of this Act, be exempt from duty.

(2) If a rectifier methylates duty-paid spirits he shall be allowed *a drawback* at the rate of duty chargeable on British spirits of the like strength.

* * * * * * *

123. (5) Foreign spirits may not be used for methylation until the difference between the duty of Customs chargeable thereon and the duty of Excise chargeable on British spirits has been paid.

By an Act to grant certain duties of customs and inland revenue August 6, 1885 (48 and 49 Vict., ch. 5, sec. 3), it was further provided:

3. (1) Where any spirits distilled and rectified in the United Kingdom *are exported* from an Excise or Customs warehouse, or are used in any such warehouse for fortifying wines, or for any other purpose to which foreign spirits may be applied, there *shall be paid* in respect of every gallon of such spirits, computed at hydrometer proof, the following allowances: that is to say,

In respect of plain British spirits, and spirits of the wine, an allowance of twopence, and

In respect of British compound spirits, an allowance of fourpence.

(2) The allowance *shall be paid* in the case of spirits exported, *to the person who shall have given security for the exportation,* and in the case of spirits used in warehouse, to the *person upon whose written request the spirits shall have been so used.*

The finance act of May 30, 1895 (58 Vict., ch. 16, secs. 6 and 7), enacted:

6. Regulations of the Commissioners of Inland Revenue,
86 under section one hundred and fifty-nine of the Spirits Act, 1880, may regulate the removal *for exportation* of methylated spirits, and where spirits used for methylation are removed from a place of methylation and exported in accordance with those regulations, there shall be paid *to the exporter* an allowance of two pence for every gallon of such spirits, computed of hydrometer proof, and subsection three of the Customs and Inland Revenue Act of 1885 shall apply, as if the spirits were exported and the allowance made in pursuance of that section?

7. After the thirty-first day of December one thousand eight hundred and ninety-five, section one hundred and nineteen of the Customs Consolidation Act, 1876 (which limits the *time for the payment of a drawback* on the exportation of goods), *shall extend to the payment of any allowance* in respect *of spirits exported, used, or deposited,* which is payable under section three of the Customs and Inland Revenue Act, 1885, as amended by section twenty-one of the Revenue Act, 1889, *and to an allowance* in respect of methylated spirits *exported,* which is payable under this Act, *and* to the *payment of any drawback* of excise which is *allowed on the exportation of any goods,* in like manner, as if it were in terms made applicable thereto, and the date of user or deposit were the date of shipment.

The Finance Act of July 22, 1902, fixed the rates herein applied by the collector. Section 5 thereof, subdivision 1, reads:

5. (1) As from the seventeenth day of June nineteen hundred and two, the Customs duty of ten shillings and fourpence on imported spirits, imposed by Section seven of the Customs and Inland Revenue Act, 1881, shall, as respects spirits other than rum and brandy, be ten shillings and fivepence, and the allowance of twopence and fourpence *payable* in respect of spirits under section three of the Customs and Inland Revenue Act, 1885, and section six of the Finance Act, 1895, shall be respectively threepence and fivepence.

87 Section 8, subdivision 1 thereof, relates to and permits the withdrawal from warehouse of other than methylated goods to be used in manufactures:

8. (1) Where, in the case of any art or manufacture carried on by any person in which the use of spirits is required, it shall be proved to the satisfaction of the Commissioners of Inland Revenue that the use of methylated spirits is unsuitable or detrimental, they may, if they think fit, authorize that person to receive spirits, without payment of duty, for use in the art or manufacture upon giving security to their satisfaction that he will use the spirits in the art or manufacture, and for no other purpose, and the spirits so used shall be exempt from duty:

Provided that foreign spirits may not be so received or used until the difference between the duty of customs chargeable thereon and the duty of excise chargeable on British spirits has been paid.

Regulative thereof is subdivision 1 of section 1 of the act of August 4, 1903 (6th Ed., VII., ch. 20), reading:

1. (1) Where any spirits are used by an authorized methylator for making industrial methylated spirits, or are received by any person for use in any art or manufacture under section eight of the Finance Act, 1902, the like allowance *shall be paid* to the atuhorized methylator *or to the person by whom the spirits are received,* as the case may be, in respect of those spirits *as is payable on the exportation* of plain British spirits, and the Commissioners may by regulations prescribe the time and manner of the payment of the allowance and the proof to be given that the spirits have been or are to be used as aforesaid.

All italics in the foregoing excerpts are ours.

By statute (2d Ed. VII, ch. 7; and 6th Ed. VII, ch. 20; and General Order 20/03), universities, colleges, etc., may receive
88 on bond from a distillery or from an excise or customs warehouse limited quantities of British spirits free of duty, and, an allowance of 3 pence per proof gallon is granted in respect to such spirits (Ham's Year Book, 1914, page 165).

In addition to the specific provisions for drawback, supra, the act of July 22, 1902 (2d Ed. VII, ch. 7), (Finance Act of 1902), in the second schedule, provided generally for "Drawbacks to be allowed on articles exported or deposited in any bonded warehouse for use as ships' stores, or removed to the Isle of Man, if it is proved

to the satisfaction of the Commissioners of Customs that the duties on importation have been duly paid."

While the foregoing acts express the system and methods of levy, later enactments fix the present rates. These are shown by Ham's Year Book of 1914, Exhibit A, being a quasi-official authority published by special permission of the Commissioners of Customs and Excise.

The spirit "allowance" continues as in 1902, 3 pence and 5 pence per proof gallon as herein assessed (Ham's Year Book, 1914, page 85).

The excise of internal revenue duty under the Finance Acts, 1900, 1904, 1905, 1907, and 1910, is per proof gallon, 14 shillings 9 pence (Ham's Year Book, 1914, page 88).

The import duty upon spirits per proof gallon if imported in casks is 15 shillings 1 penny to 15 shillings 3 pence; if imported in bottles 16 shillings 1 pence to 16 shillings 3 pence (Ham's Year Book, 1914, third part, page 149).

The conspicuously pertinent matters presented by the foregoing legislative status may be epitomized as follows: There are three kinds of warehouses: (1) A Crown or Customs Warehouse owned by the government; (2) an Excise or General Warehouse owned by some one not a distiller and controlled by the government; (3) a Distiller's private Warehouse controlled by the government. That from each of these warehouses spirits may be removed for export without paying duty; but if the "allowance" is to be paid they must
89 be removed from one of the two former only and be taken direct to the ship for exportation or as stores; that goods for home consumption may be removed from any one of these warehouses upon payment of the duties; that all goods including those for export may be sold and transferred while warehoused; and, when the "allowance" is paid upon exportation it is paid to the owner or proprietor and not the manufacturer or distiller unless the latter be the exporter. So with goods delivered for ships' stores, for methylation or university use the "allowance" is paid to the seller. Upon all potable spirits manufactured and consumed in Great Britain there is laid an inland revenue tax of 14 shippings 9 pence per proof gallon. Upon all such imported in casks 15 shillings 1 pence to 15 shillings 3 pence, and in bottle 16 shillings 1 pence to 16 shillings 3 pence per proof gallon import duty is laid. Upon exportation such British spirits are relieved of all inland revenue tax and in addition thereto an "allowance" is paid out of the public treasury to the exporter of 3 pence per gallon if pure spirits and 5 pence per gallon if compounded. Wherefore, the manufacturer, distiller, dealer or exporter can place his goods in a foreign country at less home cost than he could in his domestic market; although, by reason of the import duty being higher than the excise charged, he is protected in his home market to the extent of that difference.

It must be borne in mind that this appeal concerns only the "allowance" paid exporters of 3 pence and 5 pence and not the excise duty of 14 shillings 9 pence which latter is never paid upon

spirits exported from the United Kingdom of Great Britain. The status of the latter is not here in question.

This appeal presents the question, is the former payment a "direct or indirect bounty or grant" within paragraph E of section IV of the tariff act of 1913 (38 Stat. L., 114), supra? We think it is and so hold.

90 While the briefs and oral argument of counsel for the importers are largely confined to and centered for the narrower use of the word "bounty" as controlling herein, the word "grant," equally a part of the statute and not so confined in amplitude, is but little discussed. The difference in the scope of the words "bounty" and "grant" was elaborately treated in an opinion by Judge Somerville, as a member of the Board of General Appraisers, and later adopted as the opinion of the Circuit Court of Appeals, Fourth Circuit, in Downs v. United States (113 Fed. Rep., 144), in passing upon section 5 of the tariff act of 1897 (30 Stat. L., 151), which was the predecessor paragraph of this and employed these exact words. The fact that the word "bounty" alone appeared in the similar provisions of the tariff acts of 1890 (26 Stat. L., 567), paragraph 237, and 1894 (28 Stat. L., 509), paragraph 182½, relating to countervailing duties upon sugar, was by Congress in the later and present acts supplemented by the additional word "grant" is significant of a purpose to extend the latitude of the provision. The familiar rule of statutory interpretation which accords every word of a statute a distinct and different meaning requires that some force and meaning be given the word "grant" beyond and in addition to that enjoyed by the word "bounty." Market Company v. Hoffman (101 U. S., 112, 115); Stephens v. Cherokee Nation (174 U. S., 445). A statute will not be construed so as to virtually expunge a distinct member of a sentence. Adams v. Woods (2 Cranch, 6 U. S., 336).

Whatever the view as to that matter, however, the court is of the opinion that this "allowance" to exporters is well within the word "bounty or grant" as used in said paragraph E. In Downs v. United States (187 U. S., 496, 501), the Supreme Court in interpreting the parent paragraph to this, section 5 of the tariff act of 1897 (30 Stat. L., 151, 205), and approving the definition of
91 "bounty" by Webster and Bouvier (Law Dictionary), and the Brussels Conference of 1890, stated:

A bounty is defined by Webster as "a premium offered or given to induce men to enlist in the public service; or to encourage any branch of industry, as husbandry or manufactures." And by Bouvier, as "an additional benefit conferred upon or a compensation paid to a class of persons." In a conference of representatives of the principal European powers, specially convened at Brussels in 1890 for the purpose of considering the question of sugar bounties, the definition of bounty was examined by the conference sitting in committee, who made the following report:

"The conference, while reserving the question of mitigations and provisional disposition that may be authorized, if need be by reason of exceptional situations, is of opinion that bounties whose

about this language which has been as to the particular words
65 a part of all our tariff acts from 1897 to and including the present act. (Section 5 tariff act of 1897 (30 Stat. L. 151), section 6 tariff act of 1909 (35 Stat. L. 11), paragraph E, section 21, tariff act of 1913 (38 Stat. L. 114). Its plain, explicit and unequivocal purpose is: Whenever a foreign power or dependency or any political subdivision of a government shall give any aid or advantage to exporters of goods imported into this country therefrom whereby they may be sold for less in competition with our domestic goods, to that extent by this paragraph, the duties fixed in the schedule of the act are increased. It was a result Congress was seeking to equalize regardless of whatever name or in whatever manner or form or for whatever purpose it was done. The statute interprets itself, as a member of an act calculated to maintain an accorded protection, incidental or otherwise, as against payments or grants of any kind by foreign powers resulting in an equalization thereof to any extent directly or indirectly. Wherefore, in obedience to that obvious purpose the court does not feel at liberty to adopt any constrained or technical definitions of the words "bounty" or "grant" suggested, but to construe the paragraph a meaning, well within its language, that will best effectuate the unquestioned congressional purpose.

A great portion of the briefs and record is devoted to an effort to show these payments to exporters of spirits by the United Kingdom to be an equivalent of certain excise costs attending the excise collections. "In consideration of the loss and hindrance caused by excise regulations."

The case of the appellants herein may be said to be well epitomized in exhibit C annex A, which was a document signed on March 1, 1911, by the Chairman, Deputy Chairman, and Secretary of the Board of Customs and Excise in London, reading:

The duty on British spirits is very heavy, and involves the necessity of special precautions being taken to prevent any
66 spirit escaping the duty. These precautions include the imposition upon the manufacturer of a number of statutory requirements and restrictions in connection with his plant and method of manufacture, which considerably increase the cost of manufacture. The allowances on exportation are intended to be an equivalent and no more than an equivalent of this extra cost.

The object has been kept in view in fixing the actual amount of the allowances.

The allowances were originally fixed by Mr. Gladstone in 1880 after prolonged consultation between the Revenue Authorities and the trades affected. The trades were required to formulate their claims in the fullest detail, stating what restrictions in their opinion increased the cost of manufacture and the exact amount of extra cost attributable to each; every item was closely criticised by the Revenue Authorities, some being disallowed altogether, and others allowed in whole or in part, with the result that the allowances were fixed at a figure which the Revenue Authorities accepted as not exceeding the loss caused by excise restrictions.

The fact that the payment made by the foreign government was estimated or calculated upon a certain basis or in consideration of extra burdens imposed by domestic excise laws, or for any other reason of domestic government or policy commending itself to the wisdom of Parliament, is not controlling with our courts. The sole inquiry is, do the results of such acts stimulate exportation or give a special advantage by affording aid from the public treasury whereby such goods may when exported be sold in competition with ours for less. The Supreme Court in Allen v. Smith (173 U. S., 389, 402), has concisely characterized bounties and their origin, saying:

Bounties granted by a government are never pure donations, but are allowed either in consideration of services rendered or to
95 be rendered, objects of public interest to be obtained, production or manufacture to be stimulated, or moral obligations to be recognized.

These arguments may well have been addressed as they were to those charged with due adjustment of the added burdens of an excise system: or, possibly appropriate matters of diplomatic exchanges looking to remedial action, diplomatic or legislative, but the courts must look to the law as enacted and the facts as presented and determine therefrom whether or not the acts done produce results within the terms of the law. If it be true that the excise system delineated intentionally or accidentally results in "an advantage to exporters of spirits to this country from the United Kingdom of Great Britain, which directly or indirectly is borne by the public treasury," or affords "a premium in like manner given or paid to encourage any branch of industry or manufacture," likewise exporting, such falls within this paragraph (Downs v. United States 187 U. S., 496, 502); and it matters not, nor is it made by Congress an exception thereto, that it is an incidental, indirect or unintended result of the British Government endeavoring to in part repay or compensate its manufacturers and distillers for a burdensome excise system. The courts are concerned with results and not intentions.

Indeed, the efficiency of this instrumentality to recoup the manufacturers and distillers this extra cost, is not a little difficult to grasp. The fact that under the acts of Parliament this payment may be made not to the manufacturer or distiller who suffers the extra cost but to any purchaser of the spirits while warehoused, who may after purchase withdraw them either for export or consumption, is expressive that the system is at least more heedful of the interests of the exporter who has suffered no extra burdens than of the manufacturer or distiller who has. While business acumen dictates that the presence of the possibility of this payment upon export would impel the distiller or manufacturer to exact that much more for his goods, the fact that they may be sold and transferred
96 while in a warehouse from which they may be withdrawn either for consumption or export, denies the manufacturer or distiller the certainty of that knowledge necessary to support or enforce the exaction.

In the view that undoubtedly a more equitable and natural system of recoupment of disbursements, based upon extra expenses incurred by all the manufacturers and distillers in manufacturing and distilling all spirits produced in Great Britain, would be had by payment to those who suffer the extra cost directly in due proportions instead of to a much more limited and necessarily indefinite number of exporters (including vendors of ships' stores) and "proprietors" selling universities, necessarily uncertain quantities of spirits, who did not so suffer, serious doubts naturally arise not only as to due receipt of the repayment by its intended beneficiaries but as to other actual though unintended results of the system. Wherefore, the justification made, that the system is one solely in compensation of loss and hindrance caused by excise laws and regulations, which for that reason takes the payment out of paragraph E of section IV of the tariff act of 1913 (38 Stat. L., 114), loses its effectiveness as the system is so palpably inadequate therefor and not confined thereto that the contention fails. Of course, of the wisdom and policy of the laws of a sister nation this court is not concerned. We are concerned only with their results upon the commerce of the country as designed to be protected by our duly enacted laws. This examination of the statutes and regulations is had because they seem convincing that their natural, commercial operation must utterly fail to insure recoupment of these extra costs to the manufacturers and distillers, whereas, they permit exporters and vendors, not suffering such extra costs, to enjoy these payments. The security and certainty of actual repayment to the manufacturer or distiller seem too remote and a pure gift or bonus to the exporter too proximate to support the argument of recoupment made, even were it of force in the case.

97 Nor does the fact that like payment is made to proprietors or manufacturers of foods sold for ships' stores, methylation and for use in the universities, change the legal or actual status under our laws of the payments made exporters. As a matter of fact goods for ships' stores are for exportation. As to such the considerations had need not be repeated. An allowance for goods sold universities probably encourages attendance and education by enabling students to purchase them cheaper. That undoubtedly is the result if not the purpose. So the allowance for methylated spirits and goods under section 8 of the Finance Act of 1902 are in aid and encouragement of manufacturers. But, if that is the result or purpose in such cases why not so as to exported goods? And if so does not such a payment result in an advantage to and encourage the exporter in foreign competition? And, is that not precisely what Congress sought to equalize by this paragraph? Upon the whole, however, how does the extension of the bounty of a generous government to more than one class of subjects change its character in either case? If A pays B a sum of money without consideration it neither changes nor affects the character of that act should he likewise pay C the same.

One of counsel for the appellants urges that as spirits can only be exported from excise or customs warehouses this payment might

upon the ground of added expense of the necessary passing through such warehouses thereby be warranted. There is nothing in the record as to the relative warehouse charges to support the suggestion and it is contradictory of the theory of the case chiefly relied upon by appellants. It is sufficient to point out that this argument finds its complete refutation by section 59, Spirits Act of 1880, which reads:

59. The proprietor of any plain spirits reimported into the United Kingdom may, on the issue by the Commissioners of Cus-
98 toms of a bill of store for the spirits, and on the repayment of the allowance granted on the exportation thereof, warehouse the spirits in an excise or customs warehouse.

By this paragraph upon reimportation of exported spirits the exporter can rewarehouse them in either an excise or customs warehouse and the granted allowance is returned. If the "allowance" is for warehouse charges by such warehouse or for "passing through" them, because export can only be had therefrom, why return this charge after they have been warehoused therein not only once but twice?

Incidentally, this status develops the thought that the return to the public treasury of this "allowance" deprives the exporter, or let us say the manufacturer or distiller, of that modicum of allowance due for goods which having already undergone excise regulations have had cast upon them this extra cost for which the returned monies were intended compensation.

This section (59) is further illuminative of the effects of the operation of this excise system as to our industries and tariffs. Thereby it is made apparent that while this payment is made to the importer upon "exportation" it is only paid upon that exportation which actually enters our commercial field in competition with the sale and consumption of our spirits; for the section provides that if the exported spirits are returned to the United Kingdom the payment made upon exportation must be refunded the public treasury. This payment therefore becomes absolute only when the spirits enter export competition. The effectiveness of the act is confined to actual competition in our domestic trade with our goods. It is a payment in truth not upon exportation but upon the spirits entering and remaining in foreign trade. Wherefore, this section 59 of the Spirits Act of 1880 manifests an ungenerous disregard of the declared beneficent purposes of the act to reimburse for extra costs in that although the "extra costs" of the burdensome
99 excise laws have been sustained in the production and export of the particular spirits, unless they enter and remain in actual foreign competition and trade, although they undergo the additional burden of rewarehousing and its incidental extra costs, such spirits are denied any participation in the afforded relief.

The well recognized difference between drawback and bounties, grants or allowances, are nowhere more emphasized or exemplified than in the acts of Parliament quoted. The acts and administrative orders of the Kingdom of Great Britain have ever regarded them as separate and distinct. Allowances are direct payments out

of the public treasury upon goods usually not previously imported. Drawback is repayment of monies previously paid in by the exporters upon goods previously imported. These acts are a sufficient answer to the claim herein, were it not otherwise answered and were that of virtue, that these "allowances" are justified as "drawbacks." Whether or not drawback is a bounty or grant is not an issue herein and as to that the court expresses no opinion. These payments are not drawbacks but direct payments.

Appellants rely upon a uniformity of departmental practice long continued as supporting their protests. Reference is had in that particular to the existence in some form of the statutes of Great Britain from and including the act of 1860. That this Government would be bound by the existence of a statute of Great Britain of which it presumptively has taken and can take no notice even in its courts of record unless therein proven, is, in the opinion of this court, without any force. While the first statute of Great Britain upon the subject was passed in 1860, in 1880 there was a general revision of the spirits act, and in 1889 a revision thereof by the finance and revenue acts. Paragraph E of the tariff act of 1913 (38 Stat. L., 114), in its parent, general form first appeared in the tariff act of 1897 (30 Stat. L., 151), was substantially re-enacted in 1909 (36 Stat. L., 11), and again in 1913 (38 Stat. L., 114).

The changes were as to detail of the bounties and grants
100 alike provided for in each act. Prior thereto there was no general countervailing provision in our tariff laws. The tariff acts of 1890 (26 Stat. L., 567), and 1894 (28 Stat. L., 509), contained such a provision confined to sugar alone. Under the circumstances, admitting the rule contended for, there could be no construction to paragraph E of the tariff act of 1913 (38 Stat. L., 114), until at least the enactment of the tariff act of 1897 (30 Stat. L., 151). It could not be construed before it was enacted. After enacted as section 5 of the tariff act of 1897 (30 Stat. L., 151), it was construed as contended for by appellants herein until April 18, 1911, (T. D. 31490). The Departmental action negatives rather than supports the contention of appellants. The first interpretation made by the Department was January 21, 1911 (T. D. 31229), wherein it held that the payments by the United Kingdom of Great Britain here in question were within the provisions of said section 6 of the tariff act of 1909 (36 Stat. L., 11).

Upon representation that decision of the Treasury Department was revoked April 18, 1911 (T. D. 31490). On May 25, 1914 (T. D. 34466), the Department returned to its original ruling of January 21, 1911. Without other interpretation, of which there was much by the duly constituted tribunals, this alternating practice of approximately three years would not bring appellants within the rule of long continued and uniform departmental practice.

Robertson v. Downing (127 U. S., 607);
Merritt v. Cameron (137 U. S., 542, 551);
Brennan v. United States (136 Fed. Rep., 743, 746);
United States v. Midwest Oil Co. (236 U. S., 459, 476).

On the other hand the construction or interpretation of an inferior Federal court (or reviewing board) prevails over that
101 of an administrative department. Steinmetz v. Allen (192 U. S., 543).

Early after the enactment of the parent provision, as section 5 of the tariff act of 1897 (30 Stat. L., 151), and continuously throughout its statutory existence as a part of that act, and of the tariff acts of 1909 (36 Stat. L., 11), and 1913 (38 Stat. L., 114), a uniform construction had been placed thereupon by the Board of General Appraisers and the courts contrary in principle to the contention of the appellants. The first case decided by the Board of General Appraisers was in April, 1898 (G. A. 4133; T. D. 19256), construing section 5 of the tariff act of 1897 (30 Stat. L., 151). The point here in question was not there in issue. In September, 1898, the matter of the amplitude of the parent provision, section 5 of the tariff act of 1897 (30 Stat. L., 151), was reviewed by the Board of General Appraisers (G. A. 4261; T. D. 20039). The case concerned an excise of 27 florins on raw and refined sugars produced in the Netherlands. There was a protection upon it or 2.12 florins which was deducted from the excise tax upon domestic consumption while upon exportation no tax was exacted, but at the same time the bounty was paid. The net result was that if the sugar was consumed in Holland it would have paid a tax of 24.78 florins. Upon exportation, however, no tax was paid and the shipper received a bonus of 2.12 florins. Pertinently the board said:

Whatever words may be used to express, explain, or conceal the meaning of the provisions of the Netherlands sugar law * * * whether the bounties are termed deductions, remissions of excise, or what not—the table we have given illustrates the result and shows that the Netherlands do give a substantial bounty or grant, indirect if not direct, on the exportation of sugar.

On appeal to the Circuit Court for the Southern District of New York the decision of the board was reversed, Hills v. United
102 States (99 Fed. Rep., 425). The Government appealed to the Circuit Court of Appeals, Second Circuit, which reversed the Circuit Court and sustained the board, United States v. Hills Bros. Co. (107 Fed. Rep., 107). Judge Lacombe in delivering the opinion took occasion to say:

Undoubtedly, this premium or "deduction" is called a bounty on production, and is a bounty on production; but the other provisions of the law have the practical effect of making it, from the standpoint of other countries, a bounty on exportation. The result of the whole act is no different, so far as the foreign country is concerned, from what it would be had it provided: All sugar producers shall receive a bounty paid in cash from the revenues of the government of so much per 100 kilos. Those who export their sugar may keep this bounty, those who do not export it must forthwith return it to the government.

Again, in April, 1901, the subject was exhaustively considered by the board in the Russian sugar bounty cases commencing with G. A. 4912 (T. D. 22984). The facts of this case are available in its ulti-

mate decision by the Supreme Court (Downs v. United States (187 U. S., 496)). The board held that the Russian laws were within the provisions of section 5 of the tariff act of 1897 (30 Stat. L., 151). The decision of the board was rendered by Judge Somerville, is one of great merit, and was approved and adopted by the Circuit Court of Appeals, Fourth Circuit, as its opinion. Downs v. United States, (113 Fed. Rep., 114). Part of the adopted language here pertinent was as follows:

It is important to observe, in the consideration of this subject, that section 5 of the tariff act of 1897, under which this case arises, does not use the word "bounty" in any narrow or technical meaning. It embraces "any bounty or grant" bestowed or conferred by the government, whether directly or indirectly. The word
103 "grant" is more comprehensive in meaning than the term "bounty." It implies the conferring by the sovereign power of some valuable privilege, franchise, or other right of like character, upon a corporation, person, or class of persons. * * * Indeed, the word "grant," in its broad signification, may well include the remission of a tax already levied and assessed by the authority of government. * * * The use of the word "bonification" does not change the character of this remission. * * * And in making this inquiry it is immaterial in what manner the "bounty or grant" was paid or bestowed. The law regards substances, not shadows, things not names. * * * Looked at from the Russian standpoint, these advantages might, perhaps, be described as a bounty on production; but (in the language of the circuit court of appeals in the Hills Bros. Case, supra), "from the standpoint of other countries," they become a bounty or grant on exportation. * * * It is immaterial, we may add, whether the price obtained for the exported sugar reaped a profit or inflicted a loss upon the manufacturer or producer. The simple inquiry is whether at whatever price he may have sold it, he received a bounty or grant of pecuniary value upon its exportation.

The case on certiorari was reviewed by the Supreme Court in Downs v. United States (187 U. S., 496). The language of that court affirming the foregoing is even stronger and is quoted supra.

In October, 1901, the board again rendered decision construing this section in G. A. 5012 (T. D. 23325), wherein the issue presented in the Hills Brothers Company case, supra, was reviewed, the protest overruled, and the duty countervailed. That it is the effect or result of the operation of the foreign law and not the name which is ascribed to the payment that controls decision was held in two similar cases arising in G. A. 5306 (T. D. 24306), and G. A. 5592 (T. D. 25035), the latter construing paragraph 393 of the
104 tariff act of 1897 (30 Stat. L. 151), the pertinent part of which was as follows:

393. * * * Provided, That if any country or dependency shall impose an export duty on pulp wood exported to the United States, the amount of such export duty shall be added, as an additional duty, to the duties herein imposed upon wood pulp, when imported from such country or dependency.

The board countervailed the duty. On appeal to the Circuit

Court, Northern District of New York, Myers v. United States (140 Fed. Rep., 548, 654), the following pertinent language was used:

It is not called an export duty by that Dominion, but is imposed as a license fee. The merchandise cannot escape our law, because we call it export duty and Quebec or Ontario calls it a license. The question is, What is it in effect and in fact?

The Circuit Court of Appeals affirmed the board and Circuit Court except upon grounds not involving the question herein involved. See Myers & Co. v. United States (144 Fed. Rep., 1021). Subsequently that line of decisions was followed in Reckendorn v. United States (162 Fed. Rep. 1 141). Certiorari to the Supreme Court of the United States was refused, Reckendorn v. United States (214 U. S., 514).

All claimed and shown by appellants as to the reason or purpose of this payment and the method or basis adopted for its calculation or estimation may be assumed, and the court accepts as true. All this, however, stops short of the real issue in the case, which, as stated, is the actual result or effect such action has when the exported spirits enter our markets in competition with our goods.

Whatever may have been the purpose or consideration of the payment made upon exportation of these spirits, the incontrovertible fact is present that it necessarily encouraged their exportation and enabled the exporter to sell them at a proportionately less price in competition with the goods of this country. It is a payment directly to the exporter for and upon exportation and the entry of said goods in our body commerce. The doctrine of the case, therefore, may be paraphrased from the language of the Supreme Court in Allen v. Smith, supra, "whether allowed it in consideration of services rendered or to be rendered, or with the object of a public interest to be obtained, production or manufacture to be stimulated, or a moral obligation to be recognized, it is a bounty." The decision of the Board of General Appraisers is affirmed.

105

106 United States Court of Customs Appeals.

At a session of said court continued and held at the city of Washington, pursuant to adjournment, on this 12th day of May, A. D. 1916.

Present: the Honorable Robert M. Montgomery, Presiding Judge, and the Honorables James F. Smith, Orion M. Barber, Marion De Vries and George E. Martin, Associate Judges.

The court was opened for business in due form.

* * * * * * *

No. 1594.

G. S. NICHOLAS & Co., E. LA MONTAGNE'S SONS, F. L. ROBERTS & Co., S. S. PIERCE Co., Appellants,
v.
THE UNITED STATES, Appellee.

No. 1602.

ALEX. D. SHAW & Co., KNAUTH, NACHOD & KUHNE, Appellants,
v.
THE UNITED STATES, Appellee.

Said appeals having heretofore been brought on to be heard before the court and due consideration thereon having been had, it is—

107 Ordered that the decision of the Board of United States General Appraisers be, and the same is hereby, affirmed.

* * * * * * *

(Signed) ROBERT M. MONTGOMERY,
Presiding Judge.

United States Court of Customs Appeals.

No. 1594.

NICHOLAS & Co. et al.
vs.
THE UNITED STATES.

No. 1602.

SHAW & Co. et al.
vs.
THE UNITED STATES.

Motion to Stay Mandate.

Your petitioners respectfully represent that the above entitled cases were decided adversely to the appellants by this Court on May 12, 1916; that under Rule 12 of this Court the mandate will not issue until June 11, 1916; that certificates have been filed as required by statute, signed by the Attorney General certifying that these cases are of such importance as to render expedient their review by the Supreme Court; that pursuant to the amendment of August 22, 1914, to Section 195 (38 U. S. Stat., 703) petitions for writ of certiorari must be filed within sixty days next after the issue by this Court of its mandate; that your petitioners are informed and believe that

the Supreme Court is about to adjourn for the term and that
108 Monday, June 5, is the last day on which motions will be received.

Wherefore your petitioners respectfully pray, that, to enable their statutory rights be preserved, the issue of mandates may be stayed until September 18, 1916.

COMSTOCK & WASHBURN,
Attorneys for Nicholas & Co. et al.
W. P. PREBLE,
Attorney for Shaw & Co. et al.

No objection.

BERT HANSON,
Assistant Attorney General.

Filed U. S. Court of Customs Appeals, June 2, 1916. Arthur B. Shelton, Clerk.

109 United States Court of Customs Appeals.

At a session of said court continued and held at the city of Washington, pursuant to adjournment, on this 2nd day of June, A. D. 1916.

Present: the Honorable Robert M. Montgomery, Presiding Judge, and the Honorables James F. Smith, Orion M. Barber, and George E. Martin, Associate Judges.

The court was opened for business in due form.

No. 1594.

G. S. NICHOLAS & Co., E. LA MONTAGNE'S SONS, F. L. ROBERTS & Co., S. S. PIERCE Co., Appellants,
v.
THE UNITED STATES, Appellee.

No. 1602.

ALEX. D. SHAW & Co., KNAUTH, NACHOD & KUHNE, Appellants,
v.
THE UNITED STATES, Appellee.

Upon motion of appellants to stay the issue of the mandates in said appeals until September 18, 1916, it is—

Ordered that said motion be, and the same is hereby, granted.

* * * * * * *

(Signed) ROBERT M. MONTGOMERY,
Presiding Judge.

110 United States Court of Customs Appeals.

In accordance with the above motion and order the final mandate, consisting of a certified copy of the order of the Court of the 12th day of May, 1916, was issued to the Board of United States General Appraisers on the 18th day of September, 1916.

ARTHUR B. SHELTON, *Clerk.*

United States Court of Customs Appeals.

No. 1594.

NICHOLAS & Co. et al.
vs.
THE UNITED STATES.

No. 1602.

SHAW & Co. et al.
vs.
THE UNITED STATES.

I, Arthur B. Shelton, Clerk of the United States Court of Customs Appeal, do hereby certify that the attached pages, numbered 1 to 110, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the above entitled appeals, as the same remain of record and on file in this office.

Witness my hand and the seal of this court this 30th day of October, A. D. 1916.

[Seal of the United States Court of Customs Appeals.]

ARTHUR B. SHELTON, *Clerk.*

111 1594.

UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Court of Customs Appeals, Greeting:

Being informed that there is now pending before you a suit in which G. S. Nicholas & Company et al. are appellants, and The United States is appellee, No. 1594, which suit was removed into the said Court of Customs Appeals by virtue of an appeal from the Board of United States General Appraisers, and we, being

willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Court of Customs Appeals and removed into the Supreme Court of the United
112 States. Do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the twenty-fourth day of November, in the year of our Lord one thousand nine hundred and sixteen.

JAMES D. MAHER,
Clerk of the Supreme Court
of the United States.

[Endorsed:] 1594. File No. 25,587. Supreme Court of the United States. No. 757, October Term, 1916. G. S. Nicholas & Company et al. vs. The United States. Writ of Certiorari. Filed United States Court of Customs Appeals, Dec. 2, 1916. Arthur B. Shelton, Clerk.

113 In the Supreme Court of the United States, October Term, 1916.

No. 757.

G. S. NICHOLAS & Co. et al., Petitioners,
vs.
THE UNITED STATES.

Stipulation as to Return to Writ of Certiorari.

It is hereby stipulated by counsel for the parties to the above entit'ed cause that the certified copy of the transcript of the record on file in the Supreme Court shall constitute the return of the Clerk of the Court of Customs Appeals to the writ of certiorari issued herein.

December 2d, 1916.

ALBERT W. WASHBURN,
Counsel for Petitioners.
JNO. W. DAVIS,
Solicitor General.

H.

114 [Endorsed:] No. 757. In the Supreme Court of the United States, October Term, 1916. G. S. Nicholas & Co. et al., Petitioners, vs. The United States. Stipulation as to Return to Writ of Certiorari. Comstock & Washburn, Attorneys for Petitioners, 12 Broadway, N. Y.

115 *Return to Writ.*

United States Court of Customs Appeals

In obedience to the command of the within writ of certiorari and in pursuance of the stipulation of the parties which is herein returned, I hereby certify that the transcript of record furnished with the application for the writ of certiorari in the case of G. S. Nicholas & Co. et al v. The United States, No. 1006, is a full, true and complete copy of the transcript of the record and proceedings in said appeal.

In testimony whereof I hereunto subscribe my name and affix the seal of the United States Court of Customs Appeals this 6th day of December, A. D. 1916.

[Seal of the United States Court of Customs Appeals.]

ARTHUR B. SHEELY,
Clerk of the United States
Court of Customs Appeals.

116 [Endorsed:] 22,267.

117 [Endorsed:] File No. 22,267. Supreme Court U. S., October Term, 1916. Term No. 222. G. S. Nicholas & Co. et al., Petitioners, vs. The United States. Writ of Certiorari and Return. Filed December 5, 1916.

118 UNITED STATES OF AMERICA, ss:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Court of Customs Appeals, Greeting:

Being informed that there is now pending before you a suit in which Alex. D. Shaw & Company et al. are appellants, and The United States is appellee, No. 1006, which suit was removed into the said Court of Customs Appeals by virtue of an appeal from the Board of United States General Appraisers, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Court of Customs Appeals and removed into the Supreme Court of the United States,

119 We hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the twenty-fourth day of November, in the year of our Lord one thousand nine hundred and sixteen.

JAMES D. MAHER,
Clerk of the Supreme Court
of the United States.

(1) [illegible] is dead [illegible] No. [illegible] covered [illegible]

[illegible] [illegible] No. [illegible] Supreme Court of the United States, [illegible] October Term, [illegible] [illegible] & Company [illegible], [illegible] The United States. [illegible] of Certiorari.

(2) In the Supreme Court of the United States, October Term, [illegible]

No. [illegible]

[illegible] & Company et al., Petitioners,

vs.

The United States.

Stipulation as to Extent of Record.

It is hereby stipulated by counsel for the parties to the above entitled cause that the printed copy of the transcript of the record in the Supreme Court shall constitute the return of the Clerk of the Court of Customs Appeals to the writ of certiorari issued herein.

November 6th, [illegible]

[illegible]
Counsel for Petitioners.
[illegible]
Solicitor General.

(3) [illegible] No. [illegible]

United States Court of Customs Appeals.

In Obedience to the command of the within writ of certiorari and in pursuance of the stipulation of the parties hereto, a [illegible] copy of the transcript of the record heretofore filed in this court in the case of [illegible] & Co. et al. v. United States, No. [illegible], is full, true and complete copy of the transcript of the record and proceedings in said cause.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the United States Court of Customs Appeals this [illegible] day of November, A. D. [illegible]

[Seal of the United States Court of Customs Appeals.]

[illegible]
Clerk of the United States
Court of Customs Appeals.

[illegible] [illegible]

(4) [illegible] No. [illegible] Supreme Court U. S. October Term, [illegible] [illegible] No. [illegible] [illegible] & Co. et al., Petitioners, vs. The United States et al. Writ of certiorari and return. Filed Dec. [illegible]